

DEPOSITION OF TERRANCE G. MCDONNELL
FELICIA S. HENDRICKS v. TERRANCE MCDONNELL, ET AL.

May 16, 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

FELICIA S. HENDRICKS,

Plaintiff,

vs.

CASE NO. 2:05-CV-714-F

TERRANCE MCDONNELL, et al.,

Defendants.

* * * * *

DEPOSITION OF TERRANCE G. MCDONNELL,
taken pursuant to stipulation and agreement
before Sherry Mack, Court Reporter and
Commissioner for the State of Alabama at Large,
in the Legal Offices of The Department of
Corrections, 301 South Ripley Street, Criminal
Justice Building, Montgomery, Alabama, on
Tuesday, May 16, 2006, commencing at
approximately 1:36 p.m.

* * * * *



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1 APPEARANCES

2 FOR THE PLAINTIFF:

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Montgomery, Alabama 36104

5 FOR THE DEFENDANTS:

6 Mr. Greg Biggs
7 Assistant Attorney General
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9 *****

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8 STIPULATIONS

9 It is hereby stipulated and agreed by
10 and between counsel representing the parties that
11 the deposition of Terrance G. McDonnell is taken
12 pursuant to the Federal Rules of Civil Procedure
13 and that said deposition may be taken before
14 Sherry Mack, Court Reporter and Commissioner for
15 the State of Alabama at Large, without the
16 formality of a commission; that objections to
17 questions other than objections as to the form of
18 the questions need not be made at this time but
19 may be reserved for a ruling at such time as the
20 deposition may be offered in evidence or used for
21 any other purpose as provided for by the Federal
22 Rules of Civil Procedure.

23 It is further stipulated and agreed by

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1 and between counsel representing the parties in
2 this case that said deposition may be introduced
3 at the trial of this case or used in any manner
4 by either party hereto provided for by the
5 Federal Rules of Civil Procedure.

6 *****

7 COURT REPORTER: What about signature,
8 Mr. Biggs?

9 MR. BIGGS: Yes, he'd like to read.

10 That's fine.

11 TERRANCE G. McDONNELL

12 The witness, having first been duly
13 sworn to speak the truth, the whole truth, and
14 nothing but the truth, testified as follows:

15 EXAMINATION

16 BY MR. PITTERS:

17 Q. All right. Please state your name for the
18 record, sir.

19 A. Terrance G. McDonnell. Spelling is
20 M-C-D-O-N-N-E-L-L.

21 Q. And did you say M-C-D-O --

22 A. -- O-N-N-E-L-L.

23 Q. And what does the G in McDonnell stand

Page 5

1 for -- the G in -- the middle initial.

2 A. Gregory.

3 Q. Gregory. What's your date of birth?

4 A. 11/30/59.

5 Q. What's your address?

6 A. 11855 Wares Ferry Road.

7 Q. 36117?

8 A. Yes, sir.

9 MR. PITTERS: Let's go off the record.

10 (Off-the-record discussion)

11 Q. Date of birth, address. Where are you
12 employed?

13 A. State of Alabama Department of Corrections.

14 Q. What do you do?

15 A. I'm the deputy commissioner for plans and
16 program.

17 Q. Deputy commissioner of what, now?

18 A. For plans and programs.

19 Q. Plans and programs. In that capacity, what
20 are you supposed to do? I mean, what's your
21 duties and responsibilities? Tell me what
22 you do.

23 A. I supervise the Alabama Correctional

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1 Industries Program. There's a director of
2 that program. I'm his immediate supervisor.
3 I supervise the Research and Planning
4 Division, directly supervise the director of
5 the Research and Planning Division, supervise
6 the director of the Central Records Division,
7 supervise or oversee religious programming
8 for the State, and educational/vocational
9 training programs, and the victims
10 constituency officer.

11 Q. In all of what you just said, did I hear you
12 correctly that you supervise the director of
13 records?

14 A. Yes, that's one of the functions, et cetera.

15 Q. Now, tell me about the director of records.
16 What does the person who occupied that
17 capacity, what do they do?

18 A. She -- she oversees the Central Records
19 Divisions for the Department of Corrections,
20 maintaining all the records for -- inmate
21 records.

22 Q. Does that have anything to do with personnel
23 records?

Page 8

1 Center. It houses the Department
2 of Corrections, Department of
3 Public Safety, and Board of
4 Pardons and Paroles.

5 Q. Now, when did you begin to occupy this
6 position of deputy commissioner of plans and
7 programs?

8 A. Early March.

9 Q. Of what year?

10 A. Of this year.

11 Q. What did you do before that?

12 A. I was the warden at Kilby Correctional
13 Facility.

14 Q. How long had you been warden at Kilby
15 Correctional Facility?

16 A. About four and a half years.

17 Q. Now, you were present during the deposition
18 of the plaintiff in this case, Felicia
19 Hendricks; is that correct?

20 A. For probably the last hour or two of that
21 deposition.

22 Q. And for the time period that you were
23 present, would I be correct in representing

Page 7

1 A. No.

2 Q. Who's in charge of personnel records?

3 A. The director -- personnel director for the
4 Department.

5 Q. Do you supervise that person?

6 A. No.

7 Q. Do you have any contact with the -- strike
8 that. So there is a director of personnel;
9 is that correct? For DOC?

10 A. Yes.

11 Q. Who is that person?

12 A. Dora Jackson.

13 Q. Is Ms. Jackson's office in the commissioner's
14 office?

15 A. No.

16 Q. Or do you know where her office is?

17 A. It's in this building.

18 Q. Is this building -- the commissioner's office
19 in this building?

20 A. Yes.

21 Q. And this building, for the record, is what
22 building?

23 MR. BIGGS: It's the Criminal Justice

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1 for the record that you heard the testimony
2 that the witness gave?

3 A. For the time that I was present, yes.

4 Q. And you were privy to exhibits that were
5 offered during the course of the deposition
6 for the time that you were present?

7 A. I -- I -- I saw -- I saw some of the exhibits
8 that were -- that were being referred to.

9 Q. And for the time that you were present, with
10 respect to those exhibits, by and large,
11 there was testimony about an incident that
12 occurred at -- somewhere adjacent to Kilby on
13 some -- in the parking lot of Kilby? Do you
14 recall that?

15 A. Yes.

16 Q. And that incident occurred on or about
17 February 20 -- well, sorry.

18 (Brief pause)

19 Q. February 10th, 2005?

20 A. Yes.

21 Q. Do you recall an incident that occurred
22 involving Ms. Hendricks -- I mean,
23 Ms. Hendricks and other employees of Kilby?

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4 (Pages 10 to 13)

Page 10

- 1 A. Yes.
2 Q. Or other employees of DOC that work at Kilby?
3 A. Yes.
4 Q. Would that be a more accurate sentence?
5 They're employees. They're not employees of
6 Kilby. They're employees of DOC, but they
7 work at Kilby or they're assigned to Kilby;
8 is that correct?
9 MR. BIGGS: And I object to the form.
10 I mean, you said, all the
11 employees. I mean, it's just only
12 a few employees were out there.
13 Q. Well, for the record, an incident that
14 occurred in the parking lot at Kilby, on or
15 about February 10th, 2005, involving
16 Ms. Hendricks and other employees of DOC who
17 work at Kilby?
18 A. Yes.
19 Q. All right. And at all times material
20 thereto, you were the warden at Kilby; is
21 that correct?
22 A. Yes.
23 Q. And before -- and as warden, what were your

Page 11

- 1 duties and responsibilities?
2 A. There -- there were a myriad of
3 responsibilities. I -- I oversaw the -- the
4 operation of the facility.
5 Q. All right. And before you became warden in
6 the four and a half years that you were
7 warden, in what capacity -- or where were you
8 employed?
9 A. Previous to Kilby, I was the warden at
10 Tutwiler Prison for Women.
11 Q. So previous to Kilby, you were employed with
12 the State of Alabama, correct?
13 A. Yes.
14 Q. DOC, correct?
15 A. Yes.
16 Q. Assigned to Tutwiler facility?
17 A. Yes.
18 Q. As warden?
19 A. Yes.
20 Q. And how long were you a warden there?
21 A. About nine months.
22 Q. Before that, where were you employed?
23 A. Ventress.

Page 12

- 1 Q. And that would be Ventress Correctional
2 Facility?
3 A. Yes.
4 Q. Which is located down in Clayton, correct?
5 A. Yes.
6 Q. And how were you the warden there? Well,
7 strike that. Were you the warden there?
8 A. Yes.
9 Q. How long were you the warden there?
10 A. Three years or so.
11 Q. And when you say, or so, probably three
12 years, thereabout?
13 A. Yeah, probably three, three and a half years.
14 Q. And before that, where were you employed?
15 A. I was the warden at Frank Lee Youth Center.
16 Q. Franklin?
17 A. Frank Lee.
18 Q. Frank Lee, L-E-E?
19 A. L-E-E, yes, sir.
20 Q. And where's that located?
21 A. Deatsville, Alabama.
22 Q. And that's operated by the Alabama Department
23 of Corrections?

Page 13

- 1 A. Yes.
2 Q. How long were you -- strike that. What were
3 you at Frank Lee Youth Center?
4 A. I was the warden.
5 Q. How long were you there?
6 A. Six months.
7 Q. Where were you before that?
8 A. At Tutwiler.
9 Q. What capacity were you working at Tutwiler?
10 A. The Warden II, the assistant warden position.
11 Q. How long were you an assistant warden,
12 Warden II, at Tutwiler?
13 A. Six months.
14 Q. Where were you before that?
15 A. Ventress.
16 Q. What capacity?
17 A. Warden II, assistant warden.
18 Q. How long were you there?
19 A. Fifteen months, eighteen months, something
20 like that.
21 Q. Where were you before that, as far as
22 employment with DOC or if you were employed
23 with the ADOC?

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5 (Pages 14 to 17)

Page 14

- 1 A. I was at Kilby before that.
- 2 Q. In what capacity were you working at Kilby?
- 3 A. Captain -- captain and lieutenant at that
- 4 time.
- 5 Q. How long were you at Kilby in those
- 6 positions?
- 7 A. Between the two of them, ten years.
- 8 Q. All right. Now, how is the position at Kilby
- 9 as captain and lieutenant different from your
- 10 working as the warden, either warden or
- 11 warden assistant?
- 12 A. Captain is supervised by a Warden II, and the
- 13 Warden II is supervised by a Warden III.
- 14 Captain's job oversees the shift operations.
- 15 The Warden II's job oversees the captain and
- 16 then some other support functions at the
- 17 facility. The warden's job then encompasses
- 18 the -- the whole arena.
- 19 Q. What about lieutenant?
- 20 A. Lieutenants normally serve in the capacity of
- 21 a shift commander or a division commander
- 22 within the prison.
- 23 Q. Have you ever given a deposition before?

Page 15

- 1 A. I think so.
- 2 Q. What caused you to give a deposition before?
- 3 A. I believe the last time I gave one
- 4 was a -- an inmate lawsuit or another
- 5 employee action. I don't recall
- 6 specifically.
- 7 Q. But you weren't a party to the lawsuit as a
- 8 defendant or --
- 9 A. As a defendant.
- 10 Q. -- plaintiff, were you?
- 11 A. As a defendant.
- 12 Q. How many times have you been sued as a
- 13 defendant?
- 14 A. I don't have any idea.
- 15 Q. Well, you're a defendant in this case, aren't
- 16 you?
- 17 A. Yes.
- 18 Q. And we know the one that you gave the
- 19 deposition in. Other than those two, have
- 20 you been sued in any other litigation?
- 21 A. Yes.
- 22 Q. And what were the nature of those suits
- 23 that -- I mean, where you're named as a party

Page 16

- 1 defendant?
- 2 A. Employee dismissal actions and employee
- 3 actions of other natures, many times from
- 4 inmates over the years.
- 5 Q. Now, in employee actions, have you
- 6 been sued -- well, your testimony is you have
- 7 been sued with respect to dismissal of
- 8 employees, correct?
- 9 A. Yes.
- 10 Q. Have you been sued with respect with those
- 11 dismissals for discriminatory conduct?
- 12 A. I don't remember specifically what the
- 13 allegations were. I've been sued for
- 14 discriminatory conduct before, and I -- and I
- 15 don't remember specifically if it was related
- 16 to a dismissal.
- 17 Q. Has anyone ever sued you as a party
- 18 defendant of DOC alleging racial
- 19 discrimination?
- 20 A. Race discrimination?
- 21 Q. Yes, sir.
- 22 A. Yes.
- 23 Q. Do you recall who the plaintiffs were?

Page 17

- 1 A. Brenda Penn was one. Brenda Penn, P-E-N-N.
- 2 When I say that on Brenda, that might have
- 3 been age and gender. I don't know if that
- 4 was race or not. I don't recall
- 5 specifically.
- 6 Q. And apparently, there's been other claims of
- 7 discrimination. You mention age and
- 8 gender --
- 9 A. There's been others.
- 10 Q. Outside of race, correct?
- 11 A. Yes.
- 12 Q. All right. Have you been to trial in any of
- 13 those cases, or has any of those cases gone
- 14 past what we call summary judgment where you
- 15 actually either end up going to trial?
- 16 A. No, never been to trial. No.
- 17 Q. Have you settled any of those cases, or do
- 18 you know if any of those cases were settled?
- 19 A. None -- none were settled.
- 20 Q. All right. Have you ever been arrested
- 21 before?
- 22 A. No.
- 23 Q. Have you ever been subjected to any kind of

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6 (Pages 18 to 21)

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1 disciplinary action during your years of
2 service with DOC?
3 A. No.
4 Q. How long have you been with the DOC?
5 A. Over 25 years.
6 Q. And of those 25 years, how many would you
7 attribute to Warden II, all the way up to
8 your present position as deputy? How many
9 years are we talking about?
10 MR. BIGGS: You want the total of how
11 many --
12 Q. No. I've got -- well, I know of ten between
13 captain and lieutenant, so that leaves me
14 with 15 years plus. Of those 15 years plus,
15 how many of them have you served as Warden II
16 up to your present deputy position?
17 A. Probably about 11.
18 Q. So you've been a Warden II and/or warden for
19 approximately 11 years; correct?
20 A. Yes.
21 Q. And as such, you -- I mean, as such, meaning
22 with respect to those 11-plus years or
23 roughly 11 years, you're familiar with the

Page 19

1 rules and regulations of the DOC?
2 A. Yes.
3 Q. As far as the operations of its correctional
4 facilities; correct?
5 A. Yes.
6 Q. All right. Do you read the regulations?
7 A. Do I read the regulations?
8 Q. Yes, sir.
9 A. Yes.
10 Q. Did you consult the regulations with respect
11 to the facts and circumstances surrounding
12 Ms. Hendricks and the February 10th, 2005,
13 incident?
14 A. Yes.
15 Q. What's your understanding of the progressive
16 discipline that DOC uses or used with respect
17 to employee discipline?
18 MR. BIGGS: Object to the form. What
19 kind of -- I think you have to
20 narrow the scope of what
21 particular incident you need him
22 to describe and how that relates
23 to the different processes

Page 20

1 contained in that administrative
2 regulation.
3 MR. PITTERS: I don't think I have to
4 do that, Counsel. I mean, I'm
5 asking him -- I'm not asking him
6 about any specific instances. I'm
7 asking him --
8 MR. BIGGS: Just a generic question?
9 MR. PITTERS: What is -- exactly. What
10 is his understanding -- well,
11 strike that.
12 Q. Let me ask you this. Do you have any
13 knowledge -- and if you don't, you can tell
14 me if you don't. Do you have any knowledge
15 whatsoever that the DOC's employee discipline
16 policy is premised on one of progressive
17 discipline?
18 A. Yes.
19 Q. And what's your understanding of progressive
20 discipline within the policies and
21 regulations of the DOC?
22 A. My understanding is that you take the
23 situation, conduct an investigation,

Page 21

1 determine the facts of the case, and then let
2 the facts of that case determine where in the
3 disciplinary process the employee should be
4 disciplined at. Minor offenses should be on
5 the lower end of the -- of the disciplinary
6 continuum. More serious offenses should be
7 on the higher end of the disciplinary
8 continuum. Offenses for repeated infractions
9 should progressively get worse, depending on
10 the details of the repeated infractions.
11 Q. Are you aware that the regulation or the
12 administrative regulation number 208, are you
13 familiar with that?
14 A. Yes, sir.
15 Q. And is it not true that that policy states
16 that employee disciplinary action will occur
17 within the principles of progressive
18 discipline which involves steps of
19 discipline?
20 A. I -- I didn't follow you through all of that.
21 MR. BIGGS: Do you need to see the reg?
22 Q. Is it not true --
23 THE WITNESS: Yes.

Page 22

1 MR. PITTERS: That's fine. You can see
2 it if your lawyer wants you to
3 look at it. And I have it if you
4 need to see it. If you don't --
5 but I mean, if you want to see it,
6 you can look at it.

7 MR. BIGGS: Would you like to see it?

8 THE WITNESS: Yes.

9 (Brief pause)

10 THE WITNESS: Could you repeat that
11 question?

12 Q. Is it not true that under the Administration
13 Regulation 208, that it represents that
14 employee disciplinary action will occur
15 within the principles of progressive
16 discipline, which involves steps of
17 discipline to be used regarding employee's
18 conduct?

19 MR. BIGGS: Where are you reading from
20 there, Mr. Pitters, on 208? Are
21 you reading that from 208? I'm
22 trying to look it up.

23 MR. PITTERS: I'm not reading it

Page 23

1 verbatim.

2 MR. BIGGS: Are you paraphrasing?

3 MR. PITTERS: That's correct.

4 A. All right. What was the question, then?

5 Q. Is it not true that employee disciplinary
6 action under Regulation 208 with respect to
7 progressive discipline that employee
8 disciplinary action is to occur within the
9 principles of progressive discipline which
10 involves steps of discipline to be used
11 regarding employee behavior?

12 MR. BIGGS: Object to the form. Reg
13 speaks for itself. You may answer
14 if you can.

15 A. I -- I agree that's what the reg says.

16 Q. And with respect to steps of discipline, the
17 reg calls for -- enumerates offenses in
18 various groups, group three, group four,
19 group one, and group two, et cetera, correct?

20 A. Yes.

21 Q. And with respect to those offenses, the regs
22 require that among other things, that the
23 employee disciplinary record and personnel

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1 file with respect to prior disciplinary
2 actions be taken into consideration in meting
3 out future actions, correct?

4 MR. BIGGS: Object to the form. You
5 may answer if you can.

6 A. Yes.

7 Q. Now, it is true that under the DOC's policy
8 of progressive discipline that there is a
9 reason why y'all have progressive discipline
10 at the DOC, correct?

11 MR. BIGGS: Object to the form. Answer
12 if you can.

13 A. Yes, there's a reason.

14 Q. Do you know what the reason is why y'all have
15 progressive discipline at the DOC?

16 A. I think -- I think the reason for it is -- is
17 just -- it's consistent with the philosophy
18 of trying to dole out punishment that's
19 consistent with the violation.

20 Q. And progressive discipline as used by the DOC
21 does not necessarily involve termination or
22 dismissal -- dismissing employees on a first-
23 time infraction, correct?

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1 MR. BIGGS: Object to the form. Answer
2 if you can.

3 A. It does -- it does not necessarily require
4 dismissal for a first offense, but it allows
5 for dismissal as a first offense.

6 Q. Do you know what scenarios does y'all's
7 policy allow for dismissal on the first
8 offense?

9 A. There's -- there's numerous.

10 Q. Well, tell the Court about some of them, if
11 you know.

12 A. Allowing an -- knowingly allowing an inmate
13 to escape. They're listed in the regulation
14 there. Situations that Ms. Hendricks got
15 involved with would be a situation where you
16 could use force. Any group three or group
17 four offense is appropriate to recommend
18 dismissal for a first offense if the -- if
19 the circumstances surrounding that incident
20 warrant it.

21 Q. Now, take a look at page 7 of Regulation
22 Number 8.

23 A. Okay.

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8 (Pages 26 to 29)

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1 Q. Group four lists offenses that will result in
2 dismissal on the very first offense, correct?
3 A. It -- it lists offenses that will result in
4 dismissal on the first offense.
5 Q. And it has enumerated three offenses,
6 correct?
7 A. Yes.
8 Q. None of those three offenses involve
9 Ms. Hendricks, correct?
10 A. Correct.
11 Q. In fact, the offense that you -- strike
12 that. Strike that. Now, for what occurred
13 with Ms. Hendricks on February 10, 2005, at
14 that time, you're the warden, correct?
15 A. Yes.
16 Q. And when did you first find out or found out
17 about what happened or what had occurred?
18 A. I got a call at -- at my house about sometime
19 shortly after 10 o'clock on the night of the
20 10th.
21 Q. Okay. Who called you at home?
22 A. I don't recall.
23 Q. Now, with all due respect, Mr. McDonnell, did

Page 27

1 you -- you recommended Ms. Hendricks'
2 termination, correct?
3 A. Yes, I did.
4 Q. And you represented to the Court a short
5 while ago in your testimony that her -- what
6 had occurred was so serious of an infraction
7 that it falls within -- that it warranted
8 dismissal on the very first offense, correct?
9 A. Yes.
10 Q. And for the record, Ms. Hendricks had no
11 prior disciplinary action at -- during her
12 employment with DOC up to the night of this
13 occurrence on February 10, 2005, correct?
14 A. No.
15 Q. And no, meaning she did not, correct?
16 A. No, meaning that that is incorrect. She has
17 had some previous disciplinary actions.
18 There were no current -- there were no active
19 disciplinary actions at the time this was
20 taken.
21 Q. Did you represent in any documentation that
22 she had not had any -- because I thought I
23 saw it in here.

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1 MR. PITTERS: Hold on. Strike all
2 that. Let me find it.
3 (Brief pause)
4 Q. Now, in the interest of -- we have marked
5 some exhibits before. And during
6 Ms. Hendricks' deposition, I tried to keep up
7 with what we marked in the interest of not
8 duplicating exhibits. And according to my
9 notes Defendants' Exhibit Number 10 is a
10 letter that was written, dated March 4th,
11 2005, to Ms. Hendricks from Donal or -- how
12 do you pronounce that; do you know?
13 Campbell?
14 A. Donal.
15 Q. Donal Campbell, Commissioner. Now, the
16 second page of that -- and I represent to you
17 that I'm showing you that letter. The
18 highlight is what I did, and the blue ink is
19 my notes, Defendants' Exhibit Number 10. If
20 you look at the second page, the third
21 paragraph, one, two, three, the third
22 paragraph that's not numbered. The first
23 three paragraphs are numbered two, three, and

Page 29

1 four. And then there are one, two, three,
2 four, five paragraphs that I've not
3 numbered. I'm going to direct your attention
4 to this third paragraph that's not numbered.
5 Could you read for the record what's
6 represented in that letter from the
7 commissioner to Ms. Hendricks, regarding his
8 acting on your recommendation that
9 Ms. Hendricks' employment be terminated as a
10 result of what occurred on February 10th,
11 2005?
12 A. Paragraph reads, A review of your overall
13 work record reveals no active or previous
14 disciplinary action.
15 Q. Thank you, sir. Does what you read a short
16 while ago accurately reflect what's contained
17 in this correspondence from Commissioner
18 Donal Campbell to Ms. Hendricks on or about
19 March 4th, 2005?
20 A. The paragraph that I just read?
21 Q. Yes, sir.
22 A. Yeah.
23 Q. All right. Now, on to group three. You did

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1 concede, by the way, a short while ago that
2 what occurred with Ms. Hendricks is not
3 enumerated under group four of the offenses
4 warranting immediate dismissal, correct?
5 A. Requiring immediate dismissal, yes, sir.
6 Q. All right. So the three offenses that are
7 enumerated under group four of Regulation
8 208, what occurred with Ms. Hendricks is not
9 listed as one of those offenses, correct?
10 A. That's correct.
11 Q. Now, under group three, there is
12 representation from the letter -- in the
13 letter dated March 4, 2005, from the
14 commissioner to Ms. Hendricks, there's
15 enumerated under group three, parenthesis S,
16 and parenthesis A and parenthesis N, offenses
17 that characterize or otherwise describe what
18 occurred with Ms. Hendricks, correct?
19 A. Yes.
20 Q. And immediately following the -- there is
21 enumerated parenthesis from A through V,
22 there's a paragraph.
23 A. Say preceding it or --

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1 Q. Immediately following it.
2 A. Following it?
3 Q. Yes, sir. Could you read for the Court what
4 that paragraph says, sir?
5 A. On page 7, correct?
6 Q. That is correct.
7 A. Supervisors should use discretion in
8 recommending any actions noted in group
9 three. And suspension, demotion, dismissal
10 should be recommended only in cases where
11 previous disciplinary action has failed to
12 correct behavior or when the infraction is so
13 serious as to warrant suspension, demotion,
14 or dismissal for the first offense.
15 Progressive discipline should be followed in
16 applying disciplinary action.
17 Group three offenses shall remain active
18 for one year from the date of the corrective
19 action. An employee's work history, annual
20 evaluations, and -- and disciplinary actions
21 within the last 12 months should be
22 thoroughly reviewed before recommendations
23 are submitted.

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1 Q. Tell the Court what about or what of
2 Ms. Hendricks' -- strike that. Ms. Hendricks
3 was terminated, correct, for what occurred on
4 February 10, 2005; is that correct?
5 A. Yes.
6 Q. And she was terminated by Donal Campbell?
7 A. That's correct.
8 Q. And Donal Campbell's dismissal of the
9 plaintiff was as a direct result of a
10 recommendation that she made to him, correct?
11 MR. BIGGS: Object to form. You can
12 answer it if you can.
13 A. Yes.
14 Q. And but for your recommendation, Mr. Campbell
15 would not have terminated the plaintiff,
16 correct?
17 MR. BIGGS: Object to the form. Answer
18 if you can.
19 A. I don't -- I don't know what he'd have done
20 had I not given him a recommendation.
21 Q. But for -- he adopted your recommendation,
22 correct?
23 A. He concurred with it, yes, sir.

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1 Q. And tell the Court what of Ms. Hendricks'
2 work history did you use in making your
3 decision that what occurred on February 10th
4 was of such a serious nature that it
5 warranted immediate dismissal. What did you
6 factor in from her work history in coming to
7 that conclusion?
8 A. I don't know that I understand what you're
9 asking me.
10 Q. Well, if you look -- look at the paragraph
11 that you just read, sir.
12 A. All right.
13 Q. Is it not true that it says an employee's
14 work history, annual evaluations, and
15 disciplinary actions within the last 12
16 months should be thoroughly reviewed before
17 recommendations are submitted?
18 A. I did that.
19 Q. And did you read that? Did you see where I
20 read that?
21 A. Yes.
22 Q. Did I accurately read that?
23 A. I didn't follow it verbatim.

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10 (Pages 34 to 37)

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1 Q. Well, I want you to follow it verbatim
2 because, I mean --
3 A. I read it awhile ago, and I did what this
4 called for me to do.
5 Q. And I just asked you to tell the Court what
6 of her work history did you thoroughly
7 review?
8 A. I looked at her institutional file that we
9 keep on record there. I looked at the
10 incident report. I looked at the
11 recommendation -- or the findings of the
12 investigating officer. I talked to
13 Ms. Hendricks. I talked to other witnesses
14 that were there. That's included in that
15 institutional file, was any previous
16 disciplinary actions that were contained as a
17 matter of record. There was copies of her
18 last evaluations. I considered all of that
19 when I made that recommendation for
20 dismissal.
21 Q. All right. I understand what you testified
22 to. Okay? Listen to my question. I'm not
23 asking you about anything you factored in

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1 with respect to what occurred on February the
2 10th as far as witnesses and all that that
3 you looked at, okay, or statements that were
4 taken. What I'm asking you to do is tell the
5 Court what of her work history -- history
6 means, Mr. McDonnell, that you go back in
7 time and look at circumstances that occurred
8 over said period of time. What of her work
9 history, for the period of time that she
10 worked at the DOC, that you considered with
11 respect to Ms. Hendricks in submitting a
12 recommendation that she should be dismissed?
13 MR. BIGGS: Object to form. Asked and
14 answered. You can answer it if
15 you can.
16 A. And I did already answer that question.
17 Q. What within her work history? Tell the Court
18 specifically what actions or what occurrences
19 within her work history at the DOC that you
20 used in arriving at your decision that she
21 should be terminated.
22 MR. BIGGS: Object to form. Asked and
23 answered. Already answered it.

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1 You can answer it if you change
2 your -- answer it in any way you
3 can answer it, if you'd like to
4 answer it any other way.
5 A. I've already answered it.
6 Q. No, sir, you did not. You told me about the
7 incident and testimony -- the statements from
8 witnesses. I tell you what.
9 A. And I told you that I read the file, looked
10 through her institutional file.
11 Q. All right. You looked in her institutional
12 file. But tell the Court what you saw in her
13 institutional file with respect to work
14 history that warranted dismissal.
15 MR. BIGGS: Object to the form.
16 MR. PITTERS: Wait a minute, now.
17 Don't coach him.
18 MR. BIGGS: I think you're
19 mischaracterizing his answer. I
20 mean, I think you are. You
21 mischaracterize -- all he's trying
22 to do is say, I looked at the
23 file, I examined her evaluation.

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1 He's trying to answer your
2 question.
3 MR. PITTERS: I want him to tell me
4 what was in her file. I think I'm
5 entitled to know what he looked at
6 in the file. And if he's not
7 going to tell me --
8 MR. BIGGS: He just told you he looked
9 at the last evaluation.
10 MR. PITTERS: No. No.
11 MR. BIGGS: Is there anything else you
12 looked at in the file?
13 A. There was -- there were other disciplinary
14 actions. There were past evaluations and all
15 of that, but none of that weighed heavily in
16 the decision --
17 Q. Well, I'm not going --
18 A. -- of the dismissal.
19 Q. I'm not getting -- I'm not getting there yet.
20 I'm not going to ask you what weighed
21 heavily. I want to take them one by one in
22 this regulation that outlines employee's work
23 history, it outlines annual evaluations, and

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11 (Pages 38 to 41)

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1 it outlines disciplinary actions. I want to
2 take them one at a time. I want you to tell
3 me each one -- as I go over each one, to tell
4 me what about her work history that factored
5 into your decision that she should be -- that
6 based on what occurred on February the 10th,
7 she should be terminated.

8 MR. BIGGS: Well, he just answered
9 that. He said that's got nothing
10 to do with the factors of him
11 recommending her dismissal. You
12 know, if you ask him, What did you
13 review, that's a different
14 question. But you're trying to
15 say, What did you review in the
16 file that related to you
17 recommending her dismissal. And I
18 think he's trying to tell you that
19 he looked at it all, he evaluated
20 it all, but that had nothing to do
21 with the ultimate decision to
22 dismiss her. I think that's what
23 he's trying to say.

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1 Q. Wait a minute now. Do you adopt exactly what
2 your lawyer just said?

3 A. That's, I think, pretty close to what I've
4 already said.

5 Q. No, I don't want to hear no pretty close. I
6 want answers here. I'm here to get answers
7 to --

8 MR. BIGGS: All right. Well, ask the
9 question, and he can answer it.

10 Q. Your lawyer just said that your testimony is
11 that whatever was in her work history did not
12 factor into your decision to recommend to the
13 warden that she be terminated; is that true?

14 A. I considered the work history. I considered
15 the previous evaluations. I considered the
16 previous disciplinary actions. I based my
17 decision largely on the behavior that night.

18 Q. All right. What about her work history that
19 you considered? Tell the Court what of her
20 work history that you considered.

21 A. I don't know what you're talking about.
22 Contained in that institutional file is any
23 previous disciplinary actions and her

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1 evaluations. That's what I considered.

2 Q. Where is the institutional file?

3 A. Where is it?

4 Q. Yes, sir.

5 A. Kept in the payroll -- personnel assistant's
6 office.

7 MR. BIGGS: That's the personnel file.

8 Are you talking about the
9 personnel file?

10 THE WITNESS: Yes, institutional
11 personnel file.

12 MR. BIGGS: You got a copy of the
13 personnel file. Has all the
14 evaluations and all her
15 discipline, all the things in it.

16 MR. PITTERS: Did you produce that to
17 me?

18 MR. BIGGS: Yeah. That's the very
19 first thing I gave you. As a
20 matter of fact, I thought -- well,
21 you got it.

22 MR. PITTERS: I don't see where you
23 produced it to me. I see the

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1 initial disclosures. And you
2 enumerate them, but I don't see
3 where I --

4 MR. BIGGS: I thought it was part of
5 the initial disclosure that we
6 sent you.

7 MR. PITTERS: No, sir, I don't have any
8 of that. Don't have any of that.
9 Here's my entire file, and there
10 is nothing -- let's see.

11 (Brief pause)

12 MR. BIGGS: All I can say is I thought
13 I did, and I filed it. If you
14 didn't get it back on February
15 17th, or thereabout, 2006, then
16 you should have let me know,
17 because I -- if I represented to
18 the Court I sent it to you, I sent
19 it to you. And when you get that,
20 it's up to you to look over it and
21 make sure you got everything you
22 got. So I -- unless you prove
23 otherwise, I sent it. I mean, I

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12 (Pages 42 to 45)

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1 can't go back and remember exactly
2 what I did, but I usually don't
3 file stuff, giving notice that we
4 sent things and don't send them.
5 MR. PITTERS: So you're telling me,
6 Counsel, that all these documents
7 that you listed in here -- look at
8 the crease in the thing. You're
9 telling me -- this looks like,
10 what, 11-by-4, those envelopes?
11 MR. BIGGS: Mr. Pitters, I don't --
12 MR. PITTERS: You're telling me that
13 all these documents --
14 MR. BIGGS: I don't care if it has
15 folds in it or not.
16 MR. PITTERS: -- in one of these -- all
17 that came in? This looks rather
18 voluminous, and you're telling the
19 Court that all that was folded in
20 one little bitty envelope and was
21 sent to me, and this thing -- all
22 these documents?
23 MR. BIGGS: Counselor, I'm going to

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1 tell you, if you got that document
2 in February of 2006 and you didn't
3 get everything that was contained
4 in that document, it's up to you
5 to call me on the phone and say, I
6 didn't get that. But as far as
7 I'm concerned, we sent it to you.
8 That's all I can tell you. And
9 today is May 17th, 2006, and this
10 is the first time you've brought
11 up that you haven't received
12 things that we filed with the
13 Court that we sent you?
14 MR. PITTERS: You're telling me -- are
15 you saying you filed these
16 documents with the Court?
17 MR. BIGGS: No. I filed the notice.
18 You're not supposed to file the
19 discovery.
20 MR. PITTERS: Exactly. You're
21 saying -- you just said you filed
22 something. What did you file?
23 MR. BIGGS: I filed the actual notice.

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1 Defendants' initial disclosure.
2 We filed that with the Court.
3 You're not supposed to file the
4 attached documents that we send to
5 lawyers.
6 MR. PITTERS: You're not supposed to
7 file any notice with the Court.
8 In fact, I recall the Court
9 issuing an order saying not to
10 file anything with the Court.
11 MR. BIGGS: Okay. Well, I assumed that
12 we filed that notice. But I would
13 not -- I know I wouldn't file the
14 documents attached to that. But
15 you did get a copy of it.
16 MR. PITTERS: Well, I did not. And I
17 want a copy of --
18 MR. BIGGS: You've got it in your hands
19 right now.
20 MR. PITTERS: Okay. I got this. This
21 is not the document.
22 MR. BIGGS: I understand.
23 MR. PITTERS: The institutional file --

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1 MR. BIGGS: I understand what you're
2 claiming. You're claiming that
3 you didn't get the documents
4 associated with that notice. But
5 back in February when you got that
6 document, if you -- if you're
7 claiming that you didn't receive
8 the documents that it says that
9 you're supposed to receive, it's
10 up to you to say then, I didn't
11 get these documents.
12 MR. PITTERS: Are you going to provide
13 me with these documents? Are
14 these documents here in this
15 building? We can take a
16 ten-minute pause and get them.
17 MR. BIGGS: No, we're not. We're not
18 doing that.
19 MR. PITTERS: Well, I mean, I want him
20 to tell me --
21 MR. BIGGS: We can come back another
22 time, but I'm telling you --
23 MR. PITTERS: All right. We'll come

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1 back another time.

2 MR. BIGGS: -- we sent you those
3 documents.

4 MR. PITTERS: We'll come back another
5 time. He's going to have to tell
6 me in those employee work history,
7 what he factored, what he used to
8 recommend that she be dismissed.

9 MR. BIGGS: Well, that --

10 MR. PITTERS: And as I sit here today,
11 he can't tell me.

12 MR. BIGGS: He -- well, I'm going to
13 object to that. He's been trying
14 to tell you. I don't know why
15 you're arguing with him.

16 MR. PITTERS: Let me sit down and
17 listen one more time. Maybe I
18 wasn't listening.

19 Q. Tell me what was in her employee work history
20 that you considered from reviewing her
21 initial -- her institutional file that she
22 should be fired instantaneously for what
23 occurred on October -- I mean, on February

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1 10th, 2005.

2 MR. BIGGS: Object to form. Asked and
3 answered. Answer if you can.

4 A. As I previously stated, I looked through the
5 file. I looked at the documentation that I
6 had as far as the incident, and that's what I
7 based my recommendation on.

8 Q. Tell me -- I'm sorry. Go ahead.

9 A. Gone through the entire file.

10 Q. What did you see in her employee -- entire
11 file that adversely reflected -- strike
12 that. For you to have recommended that she
13 be fired for the first offense, is it true
14 that you must have seen something adverse or
15 something that adversely reflected her
16 employment history with the State of Alabama
17 or the DOC?

18 A. In that file?

19 Q. Yes, sir.

20 A. No, sir, that would not be true. It wouldn't
21 be required that I found something in that
22 file.

23 Q. Well, did you see anything that adversely

1 reflected on her competency to serve the
2 State of Alabama in the capacity that she was
3 in on February 10, 2005, when you reviewed
4 her employee work history?

5 A. No. I based my recommendation on the
6 behavior that night.

7 Q. All right. And I know you want to get
8 there. And your lawyer wants you to
9 anxiously get there and tell me what you
10 based the recommendation on. And trust me,
11 I'll get there.

12 But for the meantime, let's limit it as
13 to the question I'm asking. Okay? And I
14 think I got an answer from you awhile ago,
15 and I'm going to move on. All right?

16 Similarly, did you see anything
17 adversely that reflected on her ability to
18 serve the State of Alabama when you reviewed
19 her annual evaluations?

20 A. No.

21 Q. Did you see anything that adversely reflected
22 on her fitness to continue to be employed by
23 the State of Alabama DOC when you looked at

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1 her previous disciplinary actions?

2 A. No.

3 Q. Okay. Which brings me to what y'all want to
4 tell me all this time, that the sole reason
5 that you based the decision to recommend her
6 termination was, according to your lawyer, on
7 what occurred that night; is that correct?

8 MR. BIGGS: Object to the form. Answer
9 it if you can.

10 A. My bases for bringing the dismissal action
11 are detailed in this exhibit. It spells it
12 out perfectly.

13 Q. And for the record, hand me this exhibit.
14 Let me look at it.

15 MR. BIGGS: I'll mark it because I'm
16 going to use it, if you want to
17 use it.

18 MR. PITTERS: You're going to mark
19 this?

20 MR. BIGGS: Yeah, I'll mark --

21 MR. PITTERS: Well, let's mark it
22 Defense #1 to his deposition.

23 MR. BIGGS: Sure. That's good.

14 (Pages 50 to 53)

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1 MR. PITTERS: Let's get off the record,

2 Ms. Mack.

3 (Off-the-record discussion)

4 MR. PITTERS: We're back on the record.

5 Q. I'm going to show you what we have marked as
6 Defendants' Exhibit #1 to your deposition,
7 Mr. McDonnell. And it is -- we believe --
8 your lawyer and myself believes -- I'm
9 looking for my exhibits to her deposition.
10 But we're almost certain -- we may be wrong,
11 but we're almost certain it's the same as
12 number six to the plaintiff's deposition that
13 we took awhile back, a few weeks ago.

14 You were just referencing that exhibit
15 as you having made your decision based on
16 quote, unquote, this -- this -- I think you
17 said this exhibit or this document. But
18 regardless if you said this exhibit or this
19 document, Defendants' Exhibit #1, according
20 to your testimony, is what you based your
21 decision on in recommending her termination;
22 is that correct?

23 A. I didn't base my decision on this document.

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1 This document reflects -- it cites the
2 reasons I recommended her dismissal.

3 Q. Okay. And tell the Court what are those
4 reasons?

5 A. She violated Administrative Regulation 207,
6 standards of conduct, paragraph Roman numeral
7 II, policies: It's the policy of the ADOC
8 that all employees maintain the highest level
9 of behavior and efficiency, reflect the best
10 imagine of public service, and uphold with
11 integrity public confidence entrusted in
12 them.

13 She violated Roman numeral V.A.7,
14 Observe all -- all laws, rules, and
15 regulations. Number nine, uphold with
16 integrity the public's trust involved in
17 their positions. B, each employee's conduct
18 shall at all times be consistent with the
19 maintenance of proper security and welfare of
20 the institution. C, employees shall not,
21 number 11, carry any weapon on the grounds of
22 any ADOC state property except as authorized
23 by the warden or division director.

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1 And then I related those 207 violations
2 to the paragraphs and Administrative
3 Regulation 208, paragraph III.A.3.a.b. A,
4 fighting, assault, physical assault, or
5 disruptive behavior; N -- N, conduct that is
6 disgraceful on or off the job that does
7 adversely affect an employee's effectiveness
8 on the job; S, position or use -- possession
9 or use of weapons or other dangerous items
10 except on duty and in designated areas and as
11 authorized in regulations and/or procedures;
12 and V, serious violations of other rules,
13 procedures, laws, or reasonable conduct
14 expectations.

15 Q. All right. When you used -- what, Regulation
16 207 you represented; is that correct?

17 A. Yes.

18 Q. Did you consult Regulation 208?

19 A. I did.

20 Q. And notwithstanding your prior testimony
21 about her work history, her annual
22 evaluations, and her disciplinary actions,
23 you still maintain that you consulted 208 in

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1 conjunction with 207, correct?

2 A. Yeah.

3 Q. Now, 208 -- Regulation 208 indicates that
4 suspension, demotion, or dismissal should be
5 recommended only in cases where previous
6 disciplinary action has failed to correct
7 behavior.

8 At the time that you make your decision,
9 did you -- you would agree with me that there
10 were no previous disciplinary or failure of
11 disciplinary action that was taken against
12 Ms. Hendricks pertaining to what had occurred
13 on February 10th, 2005, or any similar
14 conduct by her previously, correct?

15 MR. BIGGS: Object to form. Asked and
16 answered. You can answer if you
17 can.

18 A. Well, the first part of your statement is --
19 is incomplete. The suspension, demotion,
20 dismissal should be recommended only in cases
21 where previous disciplinary actions fail to
22 correct behavior or when the infraction is so
23 serious as to warrant suspension, demotion.

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15 (Pages 54 to 57)

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1 or dismissal for the first offense.
2 Q. I understand that, but what I'm trying to
3 establish is --
4 MR. BIGGS: And I object to you cutting
5 him off. He's trying to answer
6 your question. And let him finish
7 his answer before you ask him a
8 question. You can answer.
9 Q. All right. Well, go ahead. Were you
10 finished?
11 A. No, I wasn't finished.
12 Q. Okay. Go ahead.
13 A. But I forgot the question part of your
14 thing. You made that statement, and then you
15 asked me a question. What was that
16 question?
17 Q. I was asking you is it true -- is it not true
18 that there were no prior or previous
19 disciplinary action that had failed to
20 correct any similar behavior by Ms. Hendricks
21 as had occurred on February 10th, 2005?
22 MR. BIGGS: Object to form. Asked and
23 answered. Answer it if you can.

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1 A. I didn't see any similar disciplinary actions
2 in her file.
3 Q. You didn't see any previous disciplinary
4 action in her file, did you?
5 A. Yes, I did.
6 Q. You didn't see where any previous
7 disciplinary action in her file had failed to
8 correct prior behavior, did you?
9 A. There was some progressive disciplinary
10 actions in her file, none of which lead to my
11 decision to recommend dismissal.
12 Q. In other words, you were -- you acted solely
13 on what follows the conjunction or that you
14 read a short while ago; that is, when the
15 infraction is so serious as to warrant
16 suspension, demotion, or dismissal for the
17 first offense, correct?
18 A. That's -- that's what I weighed it on, yes,
19 sir.
20 Q. All right. Now, this document, Exhibit #1 --
21 Defendants' Exhibit #1 to your deposition, is
22 dated February the 18th, 2005, correct?
23 A. Yes, sir.

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1 Q. And that's within eight days of what had
2 occurred, correct?
3 A. Yes, sir.
4 Q. Is it your contention that you had gathered
5 all information that was relevant to and
6 probative of your making a final
7 determination to recommend her dismissal to
8 the commissioner within those eight days?
9 A. Yes.
10 Q. Now, the document, Exhibit #1 -- Defendants'
11 Exhibit #1 to your deposition, is it fair and
12 accurate to say that document reflects the
13 nature of the offense or offenses that
14 Ms. Hendricks has committed -- had committed
15 that you determined warranted her immediate
16 dismissal?
17 A. Yes.
18 Q. All right. Now, you've been what, warden for
19 I, II -- Warden, Warden II for roughly 11
20 years, correct?
21 A. Yes, Warden II, Warden III.
22 Q. And you're under oath. You know that,
23 correct?

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1 A. Yes.
2 Q. Did the court reporter swear you in under
3 oath?
4 A. Yes.
5 Q. Do you know what it means to be under oath?
6 A. Yes.
7 Q. Have you ever heard about the word -- did you
8 know -- I've heard about and/or know the word
9 truth, don't you?
10 A. Yes.
11 Q. You understand that you've been placed under
12 oath, you're supposed to testify truthfully,
13 don't you?
14 A. Yes.
15 Q. And the 11 or so years that you've been in
16 the position of Warden II or I or in the
17 capacity of warden, are you familiar with
18 instances that have occurred substantially
19 similar to what occurred with Ms. Hendricks?
20 MR. BIGGS: Object to the form. You
21 asked him to draw a legal
22 conclusion about what's
23 substantially similar, which is a

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16 (Pages 58 to 61)

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1 legal term, legal phrase. He's
2 not an attorney. Answer if you
3 can.
4 A. I'm not -- I -- I don't know of anything. I
5 don't recall specifically anything
6 substantially the same as this incident.
7 Q. Who keeps documents or records pertaining to
8 what happened involving Ms. Hendricks on
9 February the 8th -- February 10th, 2005?
10 A. Who keeps what documents?
11 Q. The records pertaining to statements,
12 investigations or the occurrences. Who is
13 the custodian of those records? Whatever
14 investigation was done, whatever statements
15 you received, whatever documents you
16 prepared, the letter from the commissioner
17 dated February -- March 4th, 2005, who can I
18 depose or have your lawyer contact to produce
19 me records pertaining to all that occurred --
20 all documents that were generated from what
21 occurred with Ms. Hendricks on February 10,
22 2005?
23 A. The part of this package that -- that

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1 involved her dismissal, any documents
2 associated with that would be maintained in
3 the warden's office at Kilby. Any
4 investigative records that Mr. Demus or any
5 other investigators that might have assisted
6 him with that investigation would be kept in
7 their office. Of course, the commissioner
8 would keep copies of whatever documents he
9 might have generated or the personnel
10 division.
11 Q. And so anything that occurred of a similar
12 nature as occurred with Ms. Hendricks -- for
13 example, any fights, anyone pulling guns,
14 anyone pulling weapons or using weapons with
15 respect to disputes with employees or
16 inmates, those occurrences are of a serious
17 nature as far as you're concerned, correct?
18 A. Yes.
19 Q. And those occurrences would warrant drastic
20 actions as you took against Ms. Hendricks,
21 correct?
22 MR. BIGGS: Object to the form. Calls
23 for him to speculate. You can

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1 answer if you can.
2 A. Well, each -- each time an incidence occurs,
3 you look at the circumstances. And you're
4 going to tailor your -- your punishment to
5 the details that you -- that you uncover.
6 Your investigation is going to dictate to you
7 what type of disciplinary actions you go
8 forward with.
9 Q. As you sit here today, are you telling
10 Judge -- I think Watkins -- that if someone
11 use a weapon as allegedly Ms. Hendricks did,
12 Ms. Hendricks would be fired; but then you'd
13 look at the facts and circumstances for those
14 other persons and don't fire them? Is that
15 what you're telling this Court?
16 MR. BIGGS: Object to form. That's not
17 what he's saying.
18 A. Well, no. If they did very similar work
19 Ms. Hendricks did, they would be dismissed
20 just as Ms. Hendricks was. What I'm telling
21 you, you listed a series of different things
22 that could come up. I would take each
23 incident as it comes up, conduct an

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1 investigation, compare it to the regulations,
2 and make a decision based on that value.
3 Q. If an employee similar -- a similarly
4 situated employee -- if someone as
5 Ms. Hendricks is employed at DOC, used a
6 weapon or pulled a weapon in a dispute as
7 occurred between Ms. Hendricks and her
8 employee, would that employee be terminated?
9 A. Yes.
10 Q. And if that employee is not terminated, then
11 you would concede that your treatment and the
12 disciplinary action that you and the
13 Commissioner Campbell imposed on
14 Ms. Hendricks would be different from the
15 employee as I just illustrated, correct?
16 MR. BIGGS: Object to form. You can
17 answer it if you can.
18 A. I didn't -- I didn't follow your question.
19 Repeat it for me.
20 Q. I think I asked you -- and the court reporter
21 will correct me if I'm wrong. If an employee
22 similarly situated to Ms. Hendricks used a
23 weapon in a dispute with another co-employee

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17 (Pages 62 to 65)

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1 of the DOC or used a weapon with respect to a
2 dispute with an inmate, that employee would
3 be terminated. And I think your response was
4 yes, correct?

5 MR. BIGGS: Object to form. That's not
6 what he said. That's not your
7 question.

8 MR. PITTERS: Well, I tell you what. I
9 won't even speculate. I mean,
10 she's here and that's her job.
11 I'm going to have her repeat --
12 read back the question to him as
13 he gave me an affirmative answer
14 yes. When he said yes, read the
15 question that he said yes to.

16 (The court reporter read the
17 pending question.)

18 Q. Did you hear the question?

19 A. I did.

20 Q. Did you hear your response?

21 A. Yes.

22 Q. Do you stand by that response?

23 A. Yes.

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1 Q. Now, if, as I said in that question awhile
2 ago, an employee pulls a weapon as allegedly
3 Ms. Hendricks did in a dispute with another
4 employee or if the employee pulls a weapon in
5 a dispute with an inmate and that employee is
6 not terminated, then you would agree with me
7 that that employee would have been treated
8 differently than how you treated
9 Ms. Hendricks, correct?

10 MR. BIGGS: Object to form.

11 A. They're -- they're not similar circumstances,
12 so there may be reasons for treating those
13 situations differently.

14 Q. Well, how are they not similar when they use
15 a weapon and use of a weapon calls for
16 disciplinary -- immediate termination?

17 A. There's appropriate times when you might use
18 a weapon, dealing with an inmate.

19 Q. What about an employee to an employee in a
20 situation that -- involving Ms. Hendricks?

21 MR. BIGGS: Object to form.

22 A. I've already answered that.

23 Q. And what's the answer?

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1 A. Yes, they're -- if they're the same
2 circumstances, then they're the same. But
3 you threw some different variables in the
4 question.

5 Q. And it's your testimony that there are
6 circumstances in which it would be
7 appropriate for an employee to pull a weapon
8 on an inmate?

9 A. Yes.

10 Q. Did y'all allow employees to bring weapons
11 into the facilities?

12 A. Not under normal circumstances.

13 Q. Therefore, under what circumstances would it
14 be appropriate for an employee to use -- pull
15 a weapon on an inmate and not be terminated?

16 A. Might be escorting to a hospital appointment,
17 escape attempt, assault.

18 Q. Now, let's stick to employees since we're --
19 with Ms. Hendricks, we're dealing with
20 employee/employee as opposed to
21 employee/inmates. Okay? All right. Where
22 an officer -- do you ever heard the name of
23 Officer Preston Herbert?

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1 A. Yes.

2 Q. How about Warden Sylvester Folks?

3 A. I know Mr. Folks.

4 Q. Now, let's start with those two. In 1991,
5 where can I find -- oh, strike that.

6 If in 1991 there was a fight between
7 Warden Sylvester Folks and Officer Preston
8 Herbert in the parking lot of Bullock
9 Correctional Facility, that incident should
10 have been -- there should've been an incident
11 report about that, correct?

12 A. Probably would be one.

13 Q. And where can I find that for Mr. Biggs to
14 produce it to me? Who would be the custodian
15 within the DOC that should have that incident
16 report?

17 A. The I&I Division.

18 Q. The what?

19 A. I&I Division.

20 Q. What does I&I stand for?

21 A. Inspection and Investigation Division.

22 Q. Inspection and Investigation?

23 A. Division.

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18 (Pages 66 to 69)

Page 66

1 Q. Now, in 1995, if -- ever heard of
2 lieutenant -- strike that. Strike that.
3 Preston Herbert, is he still employed at
4 DOC, to your knowledge?
5 A. I believe he is.
6 Q. What about Warden Sylvester Folks?
7 A. Yes, he is.
8 Q. All right. If in 1995 -- strike that.
9 Lieutenant Henry Perkins, do you know him?
10 A. Yes.
11 Q. Ever heard of him?
12 A. Yes.
13 Q. He's now a captain, according to my --
14 A. I think so.
15 Q. -- files. Okay. If in 1995, he and an
16 Officer Hamilton had a fight where he choked
17 Officer Hamilton, y'all should have an
18 incident report in that?
19 A. There should be an incident report or some
20 sort of documentation at the facility or at
21 the I&I Division. I'm not familiar with
22 either of those scenarios.
23 Q. Okay. In 1997, Lieutenant Perkins again,

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1 who's now captain, shot into a moving vehicle
2 and shot a free-world man that was with an
3 Officer Holmes. Do you know who Officer
4 Holmes is?
5 A. Never heard about that.
6 Q. Never heard about the incident or never heard
7 about Officer Holmes?
8 A. I don't know -- I don't know -- I know an
9 Officer Holmes, a female Officer Holmes. I
10 don't know of -- I've never heard of that
11 incident.
12 Q. But if Lieutenant Perkins, who's now Captain
13 Perkins, shot into a moving vehicle, and that
14 would be of an aggravated offense warranting
15 termination --
16 MR. BIGGS: Object to form.
17 Q. -- where Officer Holmes has an inmate or --
18 well, it's not an inmate; it's a free-world
19 man, a civilian in the vehicle.
20 MR. BIGGS: Object to form. Calls for
21 him to speculate. Answer if you
22 can.
23 A. What was the question?

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1 Q. If it is true that Officer -- I mean, Captain
2 Perkins shot into this moving vehicle and
3 shot at Officer Holmes and this other
4 gentleman in the vehicle back in -- I think
5 this is 1997 -- would that be something that
6 the DOC would be concerned about with respect
7 to its employees?
8 MR. BIGGS: Object to form. Answer it
9 if you can.
10 Q. Such that an investigation would be
11 warranted?
12 MR. BIGGS: Object to form. Answer it
13 if you can.
14 A. Well, it -- it would depend on if the -- if
15 the information was that it happened on state
16 property or while on duty. That could be a
17 variable in -- as far as how much
18 investigation is done.
19 Q. And so based on that--
20 A. If it's a --
21 Q. I'm sorry.
22 A. If it's a criminal matter and the police are
23 investigating it, then we would allow them to

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1 continue their investigation.
2 Q. At the conclusion of the investigation, y'all
3 would take some disciplinary action, I
4 presuppose?
5 MR. BIGGS: Objection to form.
6 Q. You can see --
7 MR. BIGGS: Objection to form. Calls
8 for him to speculate. Answer it
9 if you can.
10 A. I -- I mean, I'd just be speculating.
11 Q. All right. 1995 -- strike that. Ever heard
12 of an Officer Janet Sanders?
13 A. No.
14 Q. An Officer Franklin?
15 A. No.
16 Q. Bullock County Correctional Facility?
17 A. No.
18 Q. If something happens at Bullock County
19 Correctional Facility where in 1997 an
20 Officer Janet Sanders pulled a knife on
21 Officer Franklin and cut him in the upper
22 body area of the Bullock Correctional
23 Facility, that's on DOC property.

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1 Presumably, there should be some written
2 documentation about that incident, correct?

3 A. I would expect so.

4 Q. And based on what I've described in that
5 particular incident, do you think that is
6 substantially similar to the nature of the
7 offense for which you warranted Ms. Hendricks'
8 termination?

9 MR. BIGGS: Object to the form. Calls
10 for legal conclusion, invading the
11 province of the judge. Answer if
12 you can.

13 A. I'd just be speculating. I don't know any of
14 the details of that.

15 Q. Well, let me ask you this. Hypothetically
16 speaking, if it were true that an Officer
17 Janet Sanders pulled a knife on a fellow
18 officer, namely Officer Franklin, at the
19 Bullock County Correctional Facility and used
20 that knife to cut him in the upper body area,
21 would such a conduct warrant immediate
22 termination?

23 MR. BIGGS: Object to form. Answer if

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1 you can.

2 A. I would recommend dismissal action if that
3 was the circumstances.

4 Q. If in 1995 at the Bullock County Correctional
5 Facility, an Officer Janet Sanders pulled a
6 shotgun on a Sergeant R.V. Moore while on
7 duty on the outside of the facility, would
8 such an action, pulling a shotgun on a fellow
9 employee while on duty -- would such an
10 action warrant immediate dismissal?

11 MR. BIGGS: Object to the form. Answer
12 it if you can.

13 A. I'd need more details, what were the
14 circumstances? I'd --

15 Q. If one officer pulls a shotgun on another
16 officer on duty, are you telling the Court
17 you need more information to give an opinion
18 as to whether or not the officer who pulled
19 the shotgun would be subject to termination?

20 A. Yeah. Given -- given that scenario, you
21 could have an officer on a tower and
22 somebody's approaching the tower and they put
23 a shotgun on them, halt, who -- who is that?

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1 Q. Who could provide me with the information
2 pertaining to these incidents at the Bullock
3 County Correctional Facility as I have
4 enumerated to you so far?

5 A. There would be an incident -- there should be
6 an incident report or other documentation
7 filed at the facility. And normally, that
8 would be in the deputy warden or the warden's
9 office. And the I&I Division would get a --
10 get the original copy of any incident report
11 that was generated for such incidents.

12 MR. BIGGS: And for the record, these
13 are just speculation that these
14 things occurred. I mean --

15 MR. PITTERS: Well, I'll be sending --

16 MR. BIGGS: We're not admitting or
17 stating that these things are for
18 factual, and your statement is
19 that they are.

20 MR. PITTERS: I'm going to be sending
21 you a request for production of
22 documents for you to produce me
23 all these things. Okay?

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1 MR. BIGGS: If they exist, you can get
2 them.

3 Q. You know about Sergeant John Crow?

4 A. Yes.

5 Q. Are you familiar with an altercation he had
6 with his wife regarding an alleged
7 relationship with an inmate?

8 A. No.

9 Q. Are you familiar with the Sergeant Patricia
10 Davis and CO-I Johnnie Dumas?

11 A. I'm familiar with them.

12 Q. Of the Montgomery Work Center? Do you know
13 what the Montgomery Work Center is?

14 A. I do.

15 Q. And what's the relationship with Montgomery
16 Work Center and Kilby?

17 A. They're -- Montgomery Work Center is located
18 on the grounds of Kilby Prison, but it is not
19 a part of Kilby Correctional Facility. A
20 separate warden oversees the operation of
21 that facility.

22 Q. While you were the warden at Kilby, did it
23 come to your attention about an altercation

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20 (Pages 74 to 77)

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1 involving Patricia Davis and CO-I Johnnie
2 Dumas where a physical altercation occurred
3 and a radio was used as an weapon?
4 A. I -- I don't remember a radio being involved
5 in that altercation. I remember --
6 Q. Do you remember the altercation?
7 A. -- there was an altercation, some pushing and
8 shoving.
9 Q. You don't recall any weapons being used?
10 A. No, I don't recall weapons being -- being
11 involved.
12 Q. Or a radio being used as a weapon?
13 A. I don't recall a radio being used as a
14 weapon.
15 Q. What actions did you take or did anyone at
16 the facility while you were there took with
17 respect to disciplinary --
18 A. I have no operational control over the
19 Montgomery Work Center. That is -- that is
20 overseen by a separate warden, and he handled
21 that matter.
22 Q. Okay. Jimmy Glenn, do you know Jimmy Glenn
23 is at Kilby?

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1 A. I know Jimmy Glenn.
2 Q. And Albert Potterfield?
3 A. Yes.
4 Q. Were you the warden there when -- let me ask
5 you this. Are you familiar with a physical
6 altercation between the two, meaning Jimmy
7 Glenn and Albert Potterfield wherein a weapon
8 was brought into play at the receiving unit
9 at Kilby?
10 A. No, I've -- I've never heard that.
11 Q. Never heard of that?
12 A. No.
13 Q. Have you heard of any altercation involving
14 Jimmy Glenn and Albert Potterfield at Kilby?
15 A. No. I don't recall a single thing. Both of
16 them guys are retired now, so we'd be going
17 back several years. But no, I don't recall
18 anything with them.
19 Q. If such an incident occurred or such
20 altercation occurred and a weapon was used or
21 brought into play, would that be sufficiently
22 similar to what occurred with Ms. Hendricks
23 warranting termination of either Mr. Glenn or

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1 Mr. Potterfield?
2 MR. BIGGS: Object to form. Calls for
3 legal conclusion. Invades the
4 province of the Court. Answer if
5 you can.
6 A. I'd just be speculating. I don't know any of
7 the details of this alleged incident. I knew
8 all of the details or felt like I knew all of
9 the details of the incident with
10 Ms. Hendricks and based a decision on that.
11 Q. Okay.
12 (Interruption and brief
13 recess)
14 Q. Now, with respect to these incidents that
15 have come to my attention that comparing to
16 the incident involving Ms. Hendricks,
17 Mr. McDonnell, let me establish this. If the
18 incidents occurred on state property -- and
19 y'all are contending the incident involving
20 Ms. Hendricks occurred on state property,
21 right?
22 A. Yes.
23 Q. And if these other incidents occurred on

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1 state property, then they would be subjected
2 to the -- the parties would be subjected to
3 the regulations of DOC or ADOC and its
4 disciplinary provisions, correct?
5 MR. BIGGS: Object to form. Calls for
6 speculation. Answer it if you
7 can.
8 A. Yeah, that would be appropriate.
9 Q. And there should be some paper trail or some
10 incident report or some documentation of what
11 investigatory action was taken by the
12 respective persons at the respective
13 facilities where these alleged incidents
14 occurred, correct?
15 MR. BIGGS: Objection to form. Answer
16 if you can.
17 A. There should be some documentation at the
18 facility.
19 Q. And your lawyer should be able to provide me
20 those documentations if I request them,
21 correct?
22 MR. BIGGS: Objection to form. He
23 doesn't know what the lawyer can

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21 (Pages 78 to 81)

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1 do.
2 A. I would assume he could.
3 Q. With diligent search by whoever he requests,
4 somebody should be able to produce some
5 documentation pertaining to that, correct?
6 A. Yeah. If they exist, yes.
7 Q. And with respect to Patricia Davis and
8 Johnnie Dumas where you told me you're
9 familiar with -- you have some knowledge
10 about an altercation but not necessarily that
11 a radio was involved. You were the warden at
12 Kilby when this incident occurred, correct?
13 A. I was.
14 Q. And the work center, the Montgomery Work
15 Center has it's only warden, correct?
16 A. Yes.
17 Q. Now, one of those individuals -- I'm not sure
18 if it's Dumas or Davis -- but one of those
19 individuals was transferred to your facility
20 from the work center?
21 A. Correct.
22 Q. Well, which one was it? Do you recall?
23 A. Ms. Dumas.

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1 Q. Ms. Dumas. And I may be wrong, but correct
2 me if I'm wrong. Would it be -- I don't know
3 if the correct words are usual and
4 customary -- would it have been usual and
5 customary for the folks at the Montgomery
6 Work Center to apprise you of what happened
7 that warranted Ms. Dumas to be transferred to
8 your facility?
9 A. That would be correct.
10 Q. Were you apprised of what occurred?
11 A. Yeah. That's why I have that understanding
12 of -- I mean, I don't remember all the
13 details of it. I don't remember there being
14 a radio involved in that. But I was aware
15 that Ms. Dumas and Ms. Davis got into a
16 physical confrontation and that Ms. Davis --
17 Ms. Dumas was being sent to us to separate
18 those employees.
19 Q. Now, when you said physical altercation, now,
20 in Ms. Hendricks' case, there was no physical
21 altercation was there?
22 A. Yes, there was.
23 Q. Tell us about that.

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1 A. When Ms. Nelson got off of work, she was
2 approaching her car. Ms. Hendricks was
3 sitting on the hood of Ms. Nelson's car. And
4 at some point -- or leaned up against the
5 hood of Ms. Nelson's car -- and at some point
6 chest-bumped Ms. Nelson.
7 Q. Now, the bumping of the chest in this
8 situation was less of an offensive nature
9 than what happened with Ms. Dumas and
10 Ms. Davis, was it? There were --
11 A. I don't -- I don't know. I wasn't over
12 there. I did not do an investigation of
13 that. I accepted that employee from them. I
14 did not get involved in what disciplinary
15 action or whatever -- any other action they
16 took over there at the work center. I just
17 know that there was some contact. Now,
18 whether it be incidental or there was some
19 allegation that she brushed up against her at
20 she was getting -- trying to cross paths with
21 her. But you know, what that contact was,
22 how serious it was, how it compares to this,
23 I do not know.

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1 Q. Would you agree with me that all the
2 facilities that collectively make up the
3 DOC's -- the DOC and housing of inmates are
4 governed by the same code of conduct,
5 regulations, policies, and disciplinary
6 actions; correct?
7 A. Yes.
8 Q. What's good for the goose is good for the
9 gander, so to speak, correct?
10 MR. BIGGS: Object to the form. Answer
11 if you understand what he's
12 asking.
13 A. You know, I don't know what you're talking
14 about necessarily.
15 Q. It's a uniform application of the regulations
16 uniformly, disciplinary policies, uniformly
17 applied to all facilities, correct?
18 A. Should be.
19 Q. And so where an incident occurs at Ventress
20 or Kilby or Limestone that involves the
21 allegations pertaining to what occurred with
22 Ms. Hendricks, wherever it occurs, the
23 discipline should be uniformly applied.

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22 (Pages 82 to 85)

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1 correct?
2 MR. BIGGS: Object to the form. Answer
3 if you can.
4 A. I'd just be speculating, but I think any
5 other warden that had that happen on their
6 grounds probably would have done the same
7 thing I did.
8 Q. And if there --if other wardens have similar
9 situations involving weapons being used or
10 physical altercation with employees other
11 than Ms. Hendricks at their facility, then
12 the disciplinary -- the disciplinary action
13 imposed on those employees should be similar
14 to what is imposed on Ms. Hendricks, correct?
15 MR. BIGGS: Object to the form.
16 A. You know, again, I'm speculating, but you got
17 to -- you've got to take all the
18 circumstances each time an incident occurs.
19 And so if all -- if the same incident
20 happened at another facility, then the same
21 thing should have happened to her. She
22 should've been dismissed at that facility.
23 But if it's similar things, then you've got

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1 to look at the similarities and the
2 differences and weigh those issues out.
3 Q. Now, you're not Ms. Hendricks' employer,
4 correct?
5 A. Now?
6 Q. On or about February 10th of 2005.
7 A. She was employed by the Department of
8 Corrections, by the State of Alabama, Kilby
9 Correctional Facility. I was indirectly her
10 supervisor.
11 Q. All right. And all employees at the various
12 facilities, be it Kilby, Bullock County,
13 Limestone, Ventress, they may be at different
14 facilities, but they have the same employer,
15 correct?
16 A. Correct.
17 Q. Now, I think in the letter from the
18 commissioner dated March 4th of 2005, he
19 adopted what you set forth in Defendants'
20 Exhibit #1 regarding Regulation 208, Roman
21 numeral III, capital A --
22 MR. PITTERS: What's the opposite of
23 Roman numeral? Regular number 3?

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1 A, B, and warrants, 4, dismissal.
2 I don't know if you got all
3 that. Did you get all that?
4 Q. Conduct that is disgraceful on or off the job
5 that does adversely affect an employee's
6 effectiveness on their job. When you cited
7 that, what -- this incident involving
8 Ms. Hendricks occurred in the parking lot,
9 correct?
10 A. Yes.
11 Q. They're off the clock, correct?
12 A. They were.
13 Q. On the way home?
14 A. They would have been if they had got in the
15 car and drove away.
16 Q. Tell me what -- how does that affect her job
17 performance or effectiveness -- adversely
18 affect her effectiveness on the job?
19 A. Talking about the paragraph that says conduct
20 on or off the job that adversely affects --
21 Q. Yes. What did you find about what occurred
22 that adversely affect her performance in the
23 job?

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1 A. She was in a fight with another employee --
2 well, in fact, two other employees -- and at
3 some point during those altercations with
4 those employees, pulled a knife. I consider
5 that criminal activity. I think that affects
6 her ability to go back in that facility and
7 work with her coworkers, to work with
8 inmates.
9 Q. Now, you also indicate fighting, assault,
10 physical violence, or disruptive behavior. I
11 guess that's self-explanatory. But with
12 respect to other -- how do you differentiate
13 that between what's your prior testimony as
14 far as looking at circumstances involving
15 other employees such as what I told you about
16 Ms. Davis and Ms. Dumas? I mean, if it's
17 fighting, it's fighting, is it not?
18 MR. BIGGS: Object to form. Answer if
19 you can. I don't understand the
20 question.
21 A. Break the question down again for me.
22 Q. How do you distinguish between fighting,
23 assault, violence, or disruptive behavior as

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1 far as what occurred with Ms. Hendricks
2 versus what occurred with, for example,
3 Ms. Dumas and Ms. Davis?
4 MR. BIGGS: Objection to form. Calls
5 for him to speculate about that
6 event which he has no personal
7 knowledge and asks him to draw a
8 conclusion.
9 MR. PITTERS: And he did -- strike
10 that.
11 Q. You did say you didn't know anything about
12 what happened, correct, with Davis and Dumas?
13 A. I'm vaguely familiar with it.
14 Q. All right. I'll leave that one alone.
15 MR. BIGGS: Still object to the form.
16 Q. Let me switch gears real quick.
17 MR. PITTERS: Time out.
18 (Brief pause)
19 Q. What, if any -- in arriving at your decision,
20 did you -- the matter was brought to your
21 attention at ten o'clock the night that it
22 occurred. And then what did you do after you
23 thought about what had occurred?

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1 A. What did I do after being informed?
2 Q. Yes, sir.
3 A. I immediately went to the prison.
4 Q. You went to the prison that same night?
5 A. I did. And the report I got said that there
6 was a fight in the parking lot and a knife
7 was pulled. And I went to the prison that
8 night. And at that point, all of the
9 employees that were there had left the
10 parking lot.
11 Lieutenant Blackmon was still there on
12 the scene, and I talked to her. I don't know
13 if anybody else involved in the altercation
14 was there, but -- or anybody else there as a
15 witness. I think Lieutenant Blackmon may
16 have been there by herself. I'm not -- I'm
17 not certain.
18 Q. So there was an Officer Colbert; is that
19 correct?
20 A. Officer Colbert? Yes.
21 Q. Yes. That's the person that she had the
22 altercation with, correct?
23 A. That's one of the people, yes, sir.

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1 Q. And the other one is who?
2 A. Latoya Nelson.
3 Q. So Officer Nelson and Officer Colbert.
4 A. Correct.
5 Q. Were they gone? Had they already left?
6 A. As I recall, yes, they were gone.
7 Q. So too had Ms. Hendricks, correct?
8 A. That's correct.
9 Q. And what did you do after -- you spoke with
10 Lieutenant Blackmon, and what else did you
11 do?
12 A. Lieutenant Blackmon told me what she knew
13 about the incident, essentially what she put
14 in that incident report. But in that
15 Ms. Colbert had told her that she wanted to
16 file charges against Ms. Hendricks for
17 pulling a knife on her and that she would be
18 in my office first thing the next morning.
19 Q. And was she there the first thing the next
20 morning?
21 A. She did come in the next morning, yeah.
22 Q. But she didn't come in the first thing the
23 next morning?

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1 A. Correct.
2 Q. When the next morning did Ms. Colbert come
3 in?
4 A. Sometime 8, 9, ten o'clock. I don't recall
5 specifically.
6 Q. Did she --
7 A. But early morning.
8 Q. Did she come in because you called her in?
9 A. No. She came in as a result of -- of the
10 incident the night before.
11 Q. She came in on her own volition, in other
12 words?
13 A. Yes.
14 Q. And then what did you do?
15 A. She brought me a statement at that time and a
16 statement from a lady that had picked her up
17 from work that night. I took the statements
18 from them, and then I think I had already
19 talked to the investigative division by that
20 point and just collected the statements.
21 Didn't do any interviews with the people.
22 Decided that I would turn it over to the I&I
23 Division for an investigation.

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24 (Pages 90 to 93)

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1 Q. When did you make a determination that
2 Ms. Hendricks should be terminated?
3 A. What do you mean, what day?
4 Q. When after having first known about what
5 occurred did you make a decision that she
6 should be terminated?
7 A. Sometime prior to the 17th, I drafted the
8 paperwork to have her dismissed.
9 Q. Did you have all the requisite information
10 from the various parties at the time?
11 A. Yeah, before I made the recommendation, I
12 did. Now, exactly what date that was, I
13 don't know.
14 Q. Had you talked to Ms. Hendricks at all?
15 A. I spoke to Ms. Hendricks. I don't remember
16 interviewing Ms. Hendricks. I think I asked
17 Ms. Hendricks to come in, or we got her as
18 she came to work, I think is -- is what
19 happened. And the investigator was there at
20 that point and allowed the investigator to
21 interview her.
22 Q. Did you direct the investigator to launch an
23 investigation into what had occurred?

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1 A. I sent a letter to the investigative division
2 asking that investigation be conducted into
3 the circumstances of the incident that
4 occurred.
5 Q. When did you do that?
6 A. That -- the morning of the 11th, I guess it
7 would have been, and made a phone call as
8 well.
9 Q. All right. What, if any, disciplinary action
10 did you take against Ms. Colbert?
11 A. None.
12 Q. What about Ms. Nelson?
13 A. None.
14 Q. Was Ms. Hendricks the only person against
15 whom you took disciplinary action?
16 A. Relating to that incident?
17 Q. Yes, sir.
18 A. Mr. Penn received a reprimand, but I think
19 the deputy warden issued that reprimand. I
20 think I was temporarily reassigned to another
21 facility.
22 Q. Do you know why he was reprimanded?
23 A. He wasn't truthful in his statement to us

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1 about the weapon Ms. Hendricks had.
2 Q. All right. Did you ever see the knife that
3 allegedly was -- Ms. Hendricks allegedly
4 pulled that night?
5 A. Did I ever see it?
6 Q. Yes, sir.
7 A. No, sir.
8 Q. With respect to -- do y'all do what they call
9 shakedowns or random check of employees
10 coming into the facility reporting for work,
11 et cetera?
12 A. I didn't hear that last word.
13 Q. Do y'all do random check of employees
14 reporting to work at the facility?
15 A. Yes, sir.
16 Q. One of the purpose of that is to check for
17 weapons or contraband, correct?
18 A. Yes.
19 Q. And y'all do that randomly, you know,
20 spontaneous without notice, correct?
21 A. Correct.
22 Q. And it's a violation if you -- under the
23 regulations of the DOC, if employees are

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1 found in possession of weapons or contraband,
2 it's grounds for immediate termination,
3 correct?
4 A. If they're found in possession of -- of stuff
5 that they're not authorized to have. If
6 they're found in possession of contraband,
7 yes, absolutely.
8 Q. And one of those contraband is weapons,
9 correct?
10 A. That's one of them.
11 Q. Where can I find the records pertaining to
12 individuals who have -- strike that. Let me
13 ask you this. Do you know of any individual
14 who have been found in possession of weapons,
15 any kind of knife, guns, or any weapons of
16 the sort as a result of random shakedowns or
17 random searches who have -- who were not
18 terminated from the employment at the DOC?
19 A. I don't recall specifically anybody
20 that -- but, now, there's a difference
21 between somebody having a pocketknife and not
22 being authorized to have the pocketknife
23 who -- that's a possibility, to have somebody

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1 that got caught with a pocketknife on a
2 shakedown. And they'd be directed to take it
3 back to their car, and they may have
4 disciplinary action pending against them that
5 doesn't rise to the level of a dismissal
6 action.
7 Q. Tell the Court what's the difference.
8 A. What's the difference --
9 Q. Yes.
10 MR. BIGGS: Object to the form. What
11 do you mean what's the
12 difference?
13 MR. PITTERS: What's that?
14 MR. BIGGS: What's the difference?
15 What do you mean?
16 MR. PITTERS: He said there's a -- his
17 word -- he said there's a
18 difference between someone having
19 a pocketknife --
20 Q. Is that correct?
21 A. Yes, sir.
22 Q. And tell us again what your testimony was is
23 the difference between someone having a

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1 pocketknife and what?
2 A. In Ms. Hendricks' situation, where she
3 presented that pocketknife with a threat to
4 do bodily harm to another individual.
5 Q. Have you -- all right. Y'all have shakedowns
6 of individuals or -- strike that. Where do
7 y'all keep the records of shakedowns from
8 employees wherein weapons have been found in
9 possessions of those employees?
10 A. They would be in the deputy warden
11 secretary's office, and a copy of the report
12 is filed with I&I Division, just like any
13 other incident report.
14 Q. So if I submitted a request to Mr. Biggs
15 requesting all records pertaining to
16 shakedowns at facilities of the DOC, he
17 should -- for the past ten years, he should
18 be able to provide me with those records from
19 all wardens or all facilities in the DOC,
20 correct?
21 A. Truckloads of them.
22 Q. I'm sorry?
23 A. Truckloads of them.

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1 Q. And if those truckloads reveal truckloads of
2 incidents where employees were found with
3 more than pocketknives, you know, weapons,
4 guns, big knives, is there any reason why any
5 of those employees should still be in the
6 employ of the DOC?
7 MR. BIGGS: Object to form.
8 Speculation.
9 Q. I mean, you're a commissioner. You can tell
10 me something like that, can't you?
11 MR. BIGGS: About ten years worth of
12 records? I object.
13 A. We do shakedowns literally every day.
14 Q. Yeah. And if y'all have records documenting
15 where y'all have busted employees with guns,
16 knives, not just pocketknives but big knives,
17 do -- I mean, should any of those employees
18 be still within the employ of the ADOC?
19 A. We've had employees that walk in with a
20 sidearm on. They're assigned. They're
21 authorized to carry a sidearm.
22 Q. What's that?
23 A. We've had employees walk into the facility

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1 with sidearms on, guns on. They're
2 authorized to carry a weapon. They forget to
3 take the weapon off and either place it in
4 their tower or place it in their vehicle.
5 And they inadvertently walk into the
6 facility. That wouldn't necessarily give
7 rise to a dismissal action. They might be
8 reprimanded in a case like that.
9 Q. But it's -- that would be a violation of
10 Regulation 208, group three, S, correct?
11 A. That would be correct. And the disciplinary
12 table runs from a -- a written reprimand
13 through a dismissal. And as I --
14 Q. Or --
15 A. -- suggested, you might receive a reprimand.
16 Q. Or when the infraction is so serious as to
17 warrant suspension, demotion, or dismissal
18 for the first offense, correct?
19 A. Right.
20 Q. And you do have firsthand knowledge of such
21 occurrences, correct?
22 A. Like that?
23 Q. Yes.

26 (Pages 98 to 101)

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- 1 A. Where an employee has inadvertently walked in
2 the facility with a sidearm?
3 Q. Yes.
4 A. Yes.
5 Q. Do you have any firsthand knowledge of
6 incidents where the conduct was not
7 inadvertence?
8 A. With an employee and the weapon?
9 Q. Yes, sir.
10 A. No. Not -- other -- other than like small
11 pocketknives and that type.
12 Q. Yes, sir.
13 A. I don't recall specifically any other
14 weapons, no.
15 (Brief pause)
16 Q. Okay. What about shakedowns where vehicles
17 of inmates are -- I mean, not inmates --
18 employees are randomly searched and weapons
19 found? That would be a violation of the
20 Regulation 208, correct?
21 A. No, not necessarily. An employee that, under
22 the law, is authorized to carry a weapon in
23 their vehicle if they're -- if they're a law

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- 1 enforcement officer; or a hunting weapon or a
2 knife, they can have that in their possession
3 in their vehicle as long as it doesn't --
4 Q. On the property?
5 A. -- violate the law.
6 Q. On state property while they're at work?
7 A. Yes.
8 Q. And your regulation doesn't prohibit that?
9 A. No, sir. As long as it's locked in the
10 vehicle.
11 Q. If that's okay, why would shakedown extend to
12 searching of inmates -- of employee's
13 vehicles?
14 A. Drugs, other contraband items.
15 MR. PITTERS: That's all I have.
16 MR. BIGGS: I have just a few. Can I
17 have Exhibit #1 back? Thank you.
18 EXAMINATION
19 BY MR. BIGGS:
20 Q. Commissioner McDonnell, I show you what's
21 marked as Defendants' Exhibit #2. Is that a
22 true and accurate copy of Administrative
23 Regulation 208, dated July 26, 2000, that was

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- 1 in effect on or about February 10th, 2005?
2 A. Yes.
3 Q. And it outlines some of the testimony you
4 have given regarding progressive employment,
5 the procedures and progressive -- excuse
6 me -- progressive discipline and the
7 procedures used in progressive discipline as
8 well as grouping the offenses of disciplinary
9 actions?
10 A. Yes, it does.
11 Q. And on page 5, 6, and 7 of that
12 administrative reg is group three offenses
13 and lists all the offenses and consequences
14 of those offenses?
15 A. Yes.
16 Q. All right. And my understanding that on or
17 about February 18th, 2005, you had a
18 conference with Ms. Hendricks whereby you
19 gave her notice of a predissmissal conference
20 that was scheduled for sometime in early
21 March; is that correct?
22 A. I wouldn't term it a conference, but I did
23 have a meeting with her and served this

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- 1 notice of the predissmissal conference.
2 Q. So at a meeting with Felicia Hendricks, you
3 gave her notice of a predissmissal
4 conference. That was in early March of 2005?
5 A. Right, March the 2nd.
6 Q. And at that meeting, you reviewed the results
7 of the investigation that had been conducted
8 by I&I regarding the incident of February
9 10th, 2005, with Ms. Hendricks?
10 A. I reviewed the results of that?
11 Q. Right. You informed her of those results?
12 A. Yes.
13 Q. And you outlined the results of the
14 investigation in that memorandum, which we've
15 marked as Defendants' Exhibit #1.
16 A. That's correct.
17 Q. And you also outlined the different
18 regulations, 207 and 208, that you thought
19 applied in this situation?
20 A. That's correct.
21 Q. And on the second page of Defendants' Exhibit
22 #1, you indicate a review of your file does
23 not indicate any active disciplinary action.

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1 correct?
 2 A. That's correct.
 3 Q. And then the last paragraph set out that the
 4 pre-dismissal conference was to be in your
 5 office on March 2nd, 2005, at ten a.m.,
 6 correct?
 7 A. Correct.
 8 Q. And giving her a copy of this, she signed
 9 saying that she received it on February 18th,
 10 2005; correct?
 11 A. Correct.
 12 Q. Now, on or about that day, do you recall
 13 Ms. Hendricks giving you any type of
 14 grievance on that particular day?
 15 A. No, I don't recall getting any grievance on
 16 that day.
 17 Q. Now, did you have a pre-dismissal conference
 18 on March 2nd, 2005, as scheduled?
 19 A. Yes, we did.
 20 Q. And what happened at that March 2nd, 2005,
 21 pre-dismissal conference?
 22 A. We had -- it's more or less an informal
 23 meeting. We sat down, asked Ms. Hendricks

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1 for her side of the story. That document
 2 reflects her -- her very brief statement, and
 3 then lists all of the documents that she
 4 presented to me at that time.
 5 Q. I show you what's marked as Defendants'
 6 Exhibit #3. What is that?
 7 A. After the pre-dismissal conference, you
 8 normally write a letter, attach it to the
 9 record of that pre-dismissal conference with
 10 the attachments attached to it, forward it to
 11 the commissioner's office through the
 12 personnel director, advising them of your
 13 findings and what action you recommend based
 14 on that pre-dismissal conference.
 15 Q. So is this a memorandum that you compiled
 16 after the pre-dismissal conference?
 17 A. Yes.
 18 Q. Defendants' Exhibit #4, what is that?
 19 A. Defendants' Exhibit #4 is the record of the
 20 pre-dismissal conference.
 21 Q. The first page, is this compiled by you as a
 22 result of the pre-dismissal conference?
 23 A. It is, and that's the format that the

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1 regulation calls for.
 2 Q. And I see at the bottom of the first page,
 3 there's a signature, Felicia Hendricks 3/2 of
 4 '05; is that correct?
 5 A. That's correct.
 6 Q. Did she receive a copy of this that you
 7 recall?
 8 A. Yes. Yes.
 9 Q. And attached to this one page of Defendants'
 10 Exhibit #4 are several documents. And I
 11 notice on the second page there is a form.
 12 And it's entitled, Grievance Form For Step
 13 Three. What is this group of documents,
 14 including the first page?
 15 A. It's a -- it's a grievance that she submitted
 16 as part of her response at this hearing.
 17 Basically, it details her statement and some
 18 other witness statements of -- of what
 19 occurred and her witnesses heard.
 20 Q. This is a collection of documents that was
 21 compiled and given to you by Ms. Hendricks,
 22 correct?
 23 A. That's correct.

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1 Q. And the first page is entitled, Grievance.
 2 Is this attempted grievance that was filed by
 3 Ms. Hendricks on March 2nd, 2005, with you?
 4 A. I assume so, or she presented it at that
 5 hearing, yes.
 6 Q. And there's a collection of other documents.
 7 The last page of that collection of documents
 8 is -- at the top of it, it has I-N-C-L,
 9 colon, six. And it says, Grievance Complaint
 10 Form For Step One. And it's signed Felicia
 11 Hendricks, 2/17 of '05. Prior to March 2nd,
 12 2005, had you received any copy of this
 13 particular grievance form that was signed by
 14 Felicia Hendricks on February 17th, 2005?
 15 A. No, I received all of that package together
 16 at that pre-dismissal conference on March the
 17 2nd.
 18 Q. Okay. All right. And to make the record
 19 clear, that would be -- Defendants' Exhibit
 20 #5, is that a copy of that last page of
 21 Defendants' Exhibit #4?
 22 A. Yes.
 23 Q. Okay. And this page, Defendants' Exhibit #5.

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28 (Pages 106 to 109)

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1 and the second page of Defendants' Exhibit #4
2 appear to be handwritten and typed,
3 Grievances Filed by Ms. Hendricks, correct?
4 Attempted grievances, correct?
5 A. Yes.
6 Q. And in those two -- well, let me ask you
7 this. Have you reviewed both of these?
8 A. I have.
9 Q. Did Ms. Hendricks complain in either
10 Defendants' Exhibit #5 or the second page of
11 Defendants' Exhibit #4 of being treated
12 unequally because she was a female?
13 A. No, I don't -- I don't remember that being in
14 that allegation.
15 Q. I'm going to show you what's marked as
16 Defendants' Exhibit #6. Defendants' Exhibit
17 #6 is a true and accurate copy of
18 Administrative Regulation 213, dated January
19 24th, 2005; is that not correct?
20 A. Yes.
21 Q. And this is the administrative regulation
22 dealing with grievances with the Alabama
23 Department of Corrections that was in effect

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1 on or about February 10th, 2005 and
2 thereafter, correct?
3 A. Correct.
4 Q. Have you reviewed -- are you aware of this
5 particular administrative regulation?
6 A. Yes.
7 Q. This is an administrative regulation that
8 provides a grievance process for employees;
9 is that not correct?
10 A. That's correct.
11 Q. On page 2 of Defendants' Exhibit #6, Roman
12 numeral V, B, you see that?
13 A. I do.
14 Q. Okay. That says that any complaints of
15 harassment or discrimination shall be made in
16 accordance with Administrative Regulation
17 206, harassment and discrimination policy; is
18 that not correct?
19 A. That's correct.
20 Q. Paragraph C says that employee grievances
21 shall be presented in writing on ADOC Form
22 213, employee grievance form, in accordance
23 with three-step process below. Do you see

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1 that?
2 A. I do.
3 Q. Step one, a grievance shall be presented in
4 writing on ADOC Form 213 within five working
5 days of the occurrence of the incident. Do
6 you see that?
7 A. I do.
8 Q. Now, the facts of this case occurred on or
9 about February 10th, 2005, correct?
10 A. That's correct.
11 Q. And Defendants' Exhibit #5, which you did not
12 receive, is a purported grievance; but it was
13 filed or dated February 17th, 2005. Is that
14 not correct?
15 A. That's correct.
16 Q. I show you Defendants' Exhibit #7.
17 Defendants' #7 is a true and accurate copy of
18 Administrative Regulation of Alabama State
19 Department of Corrections' harassment and
20 discrimination policy dated January 27th,
21 2004; is it not?
22 A. Yes, it is.
23 Q. And this particular Administrative Regular

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1 206 was in effect on or about February 10th,
2 2005, was it not?
3 A. Yes.
4 Q. And is this the particular administrative
5 regulation referred to in Defendants' Exhibit
6 #6, Roman numeral V, paragraph B?
7 A. Yes, it is.
8 Q. Defendants' Exhibit #8, is that a true and
9 accurate copy of the letter served on
10 Ms. Hendricks, dated March 4, 2005 from Donal
11 Campbell dismissing her?
12 A. Yes.
13 Q. I show you what's marked as Defendants'
14 Exhibit #9, which I represent to you is a
15 copy of a form filed as attachments to
16 Ms. Hendricks' initial complaint in this case
17 dated March 17th, 2005. Have you ever seen
18 that before?
19 A. I think I saw that well after she had been
20 dismissed.
21 Q. And that's my point. This document, if it's
22 dated March 17th, 2005, and it purports to be
23 a grievance, was filed after she was no

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1 longer an employee, correct?
 2 A. Correct.
 3 Q. I show you what's marked as Defendants'
 4 Exhibit #10. Look at each page of that. Did
 5 you review that?
 6 A. Previous to now?
 7 Q. Just have you reviewed it or are you aware of
 8 those particular pages?
 9 A. Yes.
 10 Q. The first two pages are pages out of the
 11 Alabama State Criminal Code, correct?
 12 A. Yes.
 13 Q. You previously testified in examination by
 14 Mr. Pitters that you considered a crime being
 15 committed in the parking lot of February
 16 10th, 2005, by Ms. Hendricks, did you not?
 17 A. Yes, I did.
 18 Q. Is this the crime that you're talking about?
 19 MR. PITTERS: Objection. Leading.
 20 A. Yes.
 21 Q. And the two crimes in Defendants' Exhibit #10
 22 are assault in the first degree and assault
 23 in the second degree, correct?

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1 A. Yes.
 2 Q. How did you consider these statutes in
 3 relation to what went on in the packing lot
 4 on February 10th, 2005?
 5 A. Well, I didn't -- I didn't go and pull the
 6 code and look at the laws. What I -- what I
 7 considered was that the information, the
 8 facts of the case were that Ms. Hendricks
 9 pulled a knife, opened that pocketknife up,
 10 threatened to do bodily harm to another
 11 employee. I considered that a criminal act.
 12 I felt like I had an obligation to protect
 13 other employees that work there. They ought
 14 to be able to get off work at the end of
 15 their shift, go to their vehicles, and leave
 16 state property without being confronted by
 17 another employee and, certainly, without
 18 being confronted with an armed -- by an armed
 19 employee.
 20 Q. And a knife is a deadly weapon, correct?
 21 A. Yes.
 22 Q. Now, Mr. Pitters, in his questions -- strike
 23 that. He referred to the other officers on

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1 the scene that night on February 10th, 2005,
 2 Lieutenant Blackmon, is she a female?
 3 A. She is.
 4 Q. Is she an African-American?
 5 A. Yes.
 6 Q. Corrections Officer Colbert, is she a female?
 7 A. She is.
 8 Q. Is she an African-American female?
 9 A. Yes, she is.
 10 Q. Corrections Officer Nelson, is she a female?
 11 A. Yes.
 12 Q. Is she an African-American female?
 13 A. Yes, sir.
 14 Q. Then Mr. Pitters asked on a number of
 15 questions the allegation that Ms. Hendricks
 16 had a knife in the parking lot on February
 17 10th, 2005. Were you present during her
 18 deposition, Ms. Hendricks' deposition back on
 19 April 26, 2006, in this building?
 20 A. Yes.
 21 Q. Were you present when Ms. Hendricks testified
 22 on page 92 to the question, What did you do
 23 wrong? Answer, I did pull a pocketknife, but

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1 I did not open the pocketknife.
 2 Were you present when she said that?
 3 A. I recall her saying that during the course of
 4 that.
 5 Q. So without a doubt, Ms. Hendricks had a
 6 pocketknife on February 10th, 2005, on the
 7 grounds of the Alabama State Department of
 8 Corrections, correct?
 9 A. She did.
 10 Q. She also testified on that page on the
 11 question -- or an answer: Because I was on
 12 state property, it was wrong for me to be on
 13 state property.
 14 Do you recall her saying that?
 15 A. Yes.
 16 Q. So without a doubt, Ms. Hendricks had a knife
 17 and it was wrong admittedly for her to be on
 18 state property. That's what she said,
 19 correct?
 20 A. Yes.
 21 MR. BIGGS: That's all. Thank you.
 22
 23

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30 (Pages 114 to 117)

Page 114

1 EXAMINATION

2 BY MR. PITTERS:

3 Q. You testified you have not seen the knife,
4 correct?

5 A. I have not.

6 Q. And until this day, you still haven't seen
7 the knife, correct?

8 A. That's correct.

9 Q. And if her testimony was it was a pocketknife
10 and your -- that is in accordance with your
11 prior testimony, then there's nothing wrong
12 with having a pocketknife on state property,
13 correct?

14 MR. BIGGS: Object to the form.

15 A. Simply having a pocketknife on state property
16 is not a violation.17 Q. Okay. Now, Lieutenant Blackmon, did you talk
18 to her about what she knew when you got back
19 there?

20 A. I did.

21 Q. I think you told me that. And did she tell
22 you that she had mentioned to Sergeant Cash
23 that something was going to happen, let's go

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1 over there, meaning over where Ms. Hendricks
2 and Colbert and Nelson were? Did she tell
3 you that?

4 A. Yes.

5 Q. That she had a hunch that something was going
6 to happen?

7 A. Yes.

8 Q. Did you ever inquire from her or took her up
9 on the notion that if she has a supervisor
10 or -- and a lieutenant is ranked higher than
11 Ms. Hendricks and Colbert and Nelson,
12 correct?

13 A. Yes.

14 Q. Which takes me back to the question I was
15 asking initially, Did you take her to task --
16 her, meaning Ms. Blackmon -- as to if she
17 knew or had reason to know that something was
18 going to happen, why did she not take some
19 action before something actually happened?
20 Did you have any discussion of that sort with
21 her?22 A. No. What her words, as I understood it at
23 that point, because she heard the fussing and

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1 all that in the parking lot, she made that
2 statement, We need to get over there,
3 something is fixing to happen.4 Now, she did tell me she had been
5 hearing these rumors in the camp, that
6 Ms. Hendricks and Ms. Nelson were at odds due
7 to Nelson making allegations that
8 Ms. Hendricks stole a hundred dollars from
9 her.10 Now, didn't question her about whether
11 or not she intervened in that. That was
12 something that happened off the job. It was
13 a personal issue. She -- she didn't
14 intervene in that.15 Q. Now, with respect to the issue that Counselor
16 Biggs raised about the timing of this
17 grievance that Ms. Hendricks filed, isn't it
18 true that you issued a memo to Ms. Hendricks
19 and to the facility, others at the facility,
20 that, A, she was on a mandatory leave,
21 correct?

22 A. That's correct.

23 Q. And B, that she should not be allowed any

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1 access to the Kilby facility or the campus.

2 A. To the property. That's correct.

3 Q. So as far as her knowing what was going on
4 with respect to the pending investigation and
5 whatever actions you were taking, clearly,
6 she had no ability to file this grievance
7 until you had completed your investigation
8 and done your recommendation that she be
9 terminated, correct?

10 MR. BIGGS: Object to the form.

11 A. She could -- she could've filed a
12 grievance -- based on what's contained in
13 that grievance, she could file the grievance
14 either -- either the complaint or the
15 grievance based on what she knew when she was
16 barred from the facility.17 Q. Well, but it wouldn't have been prudent for
18 her to have filed a grievance not knowing
19 what kind of disciplinary action was going to
20 be imposed against her, correct?21 MR. BIGGS: Objection to form. Trying
22 to get into the mind of
23 Ms. Hendricks what's prudent and

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31 (Pages 118 to 121)

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1 not prudent. Answer if you can.
2 A. I -- I don't know what her rationale was with
3 the weight on the grievance.
4 Q. Well, I mean, did you put Ms. Hendricks on
5 notice that she should file a grievance
6 within five working days of the occurrence of
7 the incident? You didn't do that, did you?
8 A. She's -- she's aware of the regulation. She
9 knows what the regulations say.
10 Q. That's two different questions, though. The
11 question is not what she's aware of. The
12 question is, What did you do? And that is,
13 you did not instruct her to file a grievance
14 within five days of the occurrence of this
15 action, did you?
16 A. I didn't instruct her to file a grievance at
17 all.
18 Q. Exactly. In fact, the only thing you
19 instructed her to do was stay away from my
20 camp or my facility; you're on mandatory
21 leave, and stay away. That's all you
22 instructed her to do, correct?
23 A. Until the point that I got the report back

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1 and called her out and served her notice of
2 the dismissal.
3 Q. And that point was in excess of the five days
4 within which she could've filed a grievance,
5 correct?
6 MR. BIGGS: Object to the form.
7 A. That's correct.
8 Q. Your lawyer introduced an exhibit when we
9 were last here -- I was just looking at it a
10 while ago -- regarding infractions. And I
11 made a note of it. I think it's on
12 Regulation Number 207. Are you familiar with
13 Regulation 207?
14 A. I am.
15 MR. BIGGS: That would be Defendants'
16 Exhibit 4 of Ms. Hendricks'
17 deposition.
18 MR. PITTERS: That's correct.
19 Q. Tell the Court, when did you engage in
20 orientation with respect to Ms. Hendricks
21 pertaining to the Regulation 207?
22 A. When did I orientate her to that?
23 Q. Yes.

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1 A. The shift commanders do that.
2 Q. I'm sorry?
3 A. The shift commanders do that.
4 Q. Are they the same as the -- well, strike
5 that, please. The document that I'm looking
6 at, Reg 207 --
7 A. Yes, sir.
8 Q. -- dated May 11th, 2004, says that:
9 Warden/division director shall ensure that
10 all new DOC employees are thoroughly oriented
11 as to the contents of this regulation.
12 A. Right.
13 Q. Are the shift -- you say the shift
14 commanders, are they the same as division
15 directors?
16 A. They're -- they're the one -- they're her
17 immediate supervisor. They're the ones that
18 do the annual evaluation and do her leave.
19 In addition, it's posted on the employee
20 bulletin board, so it's there for everybody
21 to see.
22 The initial orientation as that refers
23 to is done by the administrative lieutenant

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1 or the captain's office. And they sign all
2 of the regulations that are in effect then.
3 The ones that come out, then the shift
4 commander handles those.
5 Q. Now, number 11 of Section C enumerates what
6 employees shall not do. Okay? And number 11
7 says: They shall not carry any weapon, tear
8 gas, ammunition, or blackjack into the
9 institution or on the grounds of any ADOC
10 state property except as authorized by the
11 warden/division director. Did I accurately
12 read that?
13 A. Yes.
14 Q. Does that include pocketknives?
15 A. That would include pocketknives.
16 Q. Does that include what you call the ones that
17 sit on the hip? What do you call those
18 things you -- I think you just --
19 A. Sidearms.
20 Q. Sidearm? Does that include sidearm?
21 A. Yeah, except as -- except as they're
22 authorized.
23 Q. And do you have any written authorization for

DEPOSITION OF TERRANCE G. MCDONNELL
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1 sidearms and any other weapons that --
2 A. For employees to carry?
3 Q. Yes, sir.
4 A. That are assigned weapons and all?
5 Q. Yeah.
6 A. There is an Administrative Regulation 307
7 that governs the use of those weapons.
8 Q. So there are written -- except as authorized
9 by the warden/division director, does that
10 imply Reg 307 that you're talking about?
11 MR. BIGGS: Object to the form.
12 Q. Or is that different? I'm trying to figure
13 out what does it mean, authorized by
14 warden/division directors?
15 A. I've got the authority to authorize an
16 employee to carry a weapon. In addition, 307
17 gives me parameters in which to authorize
18 weapons.
19 Q. Okay.
20 A. Who's allowed to carry what weapon, that type
21 of thing.
22 Q. And these written -- these authorizations
23 that you or the wardens are given parameters

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1 to allow, are these authorizations typically
2 in writing or are they verbal authorizations?
3 How do y'all typically exercise those
4 authorizations?
5 A. Well, some of it's by virtue of their
6 position. They're authorized certain weapons
7 because of the position they hold. So you
8 may not have a specific authorization to
9 carry a particular weapon. Others are
10 specific due to the special nature of a
11 weapon and that type of thing.
12 Q. With respect to the illustrations that I set
13 forth earlier involving employees from other
14 facilities, the Bullock County
15 Correctional --
16 A. Start again. I caught that leg cramp and
17 didn't hear a thing.
18 Q. I'm almost finished. I think I'm on the last
19 question. With respect to the illustrations
20 that I set forth earlier regarding employees
21 at Bullock County Correctional Facility,
22 Kilby or other correctional facilities within
23 the DOC, if there were authorizations for

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1 those individuals to have weapons, those
2 authorizations would be in the I&I files or
3 the warden office, correct? Are we
4 clarifying those authorizations?
5 A. I'm not -- I'm not familiar with the
6 incidents you're referring to. So I mean, if
7 you're just talking about in general terms,
8 an officer may be authorized to carry a
9 weapon because he's a transfer agent, because
10 he's a farm officer, because he's a dog
11 handler. As a warden, I'm assigned a weapon,
12 so you have people by virtue of their
13 position that are authorized to carry
14 weapons.
15 Q. And those individuals would not necessarily
16 have a written authorization, correct?
17 A. That's correct. They'd have a card that
18 authorizes them to carry certain calibers of
19 weapon but not necessarily a specific weapon.
20 MR. PITTERS: That's all I've got.
21 (The deposition concluded
22 at 4:22 p.m.)
23 ***** FURTHER DEPONENT SAITH NOT *****

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1 REPORTER'S CERTIFICATE
2 STATE OF ALABAMA
3 MONTGOMERY COUNTY
4 I, Sherry L. Mack, Court Reporter and
5 Commissioner for the State of Alabama at Large,
6 hereby certify that on Tuesday, May 16, 2006, I
7 reported the deposition of TERRANCE G. McDONNELL,
8 who was first duly sworn or affirmed to speak the
9 truth in the matter of the foregoing cause, and
10 that pages 4 through 124 contain a true and
11 accurate transcription of the examination of said
12 witness by counsel for the parties set out
13 herein.
14 I further certify that I am neither of kin
15 nor of counsel to any of the parties to said
16 cause, nor in any manner interested in the
17 results thereof.
18 This 19th day of May, 2006.
19
20
21 SHERRY MACK, COURT REPORTER
22 Commissioner For the State
23 of Alabama at Large
MY COMMISSION EXPIRES: 1/06/08

DEPOSITION OF TERRANCE G. MCDONNELL
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May 16, 2006

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SIGNATURE OF WITNESS

I, TERRANCE G. McDONNELL, hereby certify
that I have read the transcript of my deposition
consisting of pages 4 through 124, and except for
the corrections listed below, certify that it is
a true and correct transcription.

TERRANCE G. McDONNELL

SWORN TO AND SUBSCRIBED before me
this ____ day of ____, 2006.

NOTARY PUBLIC

Page Line Correction and reason therefor

114 wpy

State of Alabama
Alabama Department of Corrections

Kilby Correctional Facility
P.O.Box 150
Mt. Meigs, AL 36057

334-215-6603
Fax-215-6606

TERRANCE MCDONNELL
WARDEN III

February 18, 2005

MEMORANDUM:

Terrance McDonnell
FROM: TERRANCE MCDONNELL, WARDEN
TO: CO I FELICIA HENDRICKS
SUBJECT: NOTICE OF PRE-DISMISSAL CONFERENCE

It was reported to me that on February 10, 2005, at approximately 10:06 PM Lt. Tchernavia Blackmon and Sgt. Kenneth Cash observed a disturbance in the Kilby parking lot involving you, CO I Latoya Nelson, and CO I Lilkenya Colbert. Voices were heard screaming and cursing while another officer was attempting to restrain you.

An investigation was conducted by Mr. Demus, I & I Investigator, which revealed the following:

You, CO I Hendricks, did admit to Mr. Demus that you did pull a knife on CO I Colbert, in the Kilby parking lot. You turned the knife into Mr. Demus on Monday, February 14, 2005, stating it was the knife you pulled on CO I Colbert on the night of 2-10-05. Also, you admitted to Investigator Demus that you bullied CO Nelson by brushing up against her with your chest while pushing her backwards (with your chest). Another officer had to restrain you from attacking/going after CO Colbert while you were struggling to get to CO Colbert. There were numerous witnesses to this incident in the parking lot regarding your involvement in pulling the knife and/or physical and verbal confrontation on CO Is Colbert and Latoya Nelson.

Your actions are in direct violation of Administrative Regulation 207: Standards of Conduct:

II. Policy: It is the policy of the ADOC that all employees maintain the highest level of behavior and efficiency, reflect the best image of public service, and uphold with integrity the public confidence entrusted in them.

V. A. 7. Observe all laws, rules and regulations.

9. Uphold, with integrity, the public's trust involved in their positions.

B. Each employee's conduct shall, at all times, be consistent with the maintenance of proper security and welfare of the institution ...



C. Employees shall not:

11. Carry any weapon...on the grounds of any ADOC state property, except as authorized by the Warden/Division Director.

This type behavior can not be tolerated. It creates a tremendous risk for the life and safety of other employees at this institution and to the orderly operations of Kilby. Employees behaving in this manner can not work together to provide for a safe and secure work environment. Due to the extreme seriousness of your infractions, the penalties for the above violations are reflected in AR 208: III.A.3.a.b. and warrants (4)Dismissal.

- (a) Fighting, assault, physical violence or disruptive behavior.
- (n) Conduct that is disgraceful, on or off the job, that does adversely affect an employee's effectiveness on the job.
- (s) Possession or use of ...weapons... or other dangerous items, except on duty and in designated areas and as authorized in regulations and/or procedures.
- (v) Serious violations of other rules, procedures, laws, or reasonable conduct expectations.

A review of your file does not indicate any active disciplinary action.

In accordance with AR 208, I have scheduled a pre-dismissal conference in my office on Wednesday, March 2, 2005, at 10:00 AM. This dismissal conference is for the purpose of allowing you to present information to me regarding the action under consideration; i.e., a chance for you to "tell your side of the story". Our conference shall be informal. You may present written statements of witnesses or any other information regarding these charges. You may, at your own expense, have representation present at this conference, but only as an observer, not a participant.

You may voluntarily resign in lieu of dismissal. However, it is highly probable that you will not be recommended for re-employment with the Department of Corrections.

cc: file

James D. Lee 2-18-05 9:13A
 Witness Date TIME

Julia H. Smith 2/18/05
 Received Date



STATE OF ALABAMA
DEPARTMENT OF CORRECTIONS

Research, Monitoring, & Evaluation
Post Office Box 301501
Montgomery, Alabama 36130-1501

Don Siegelman
GOVERNOR

Michael W. Haley
COMMISSIONER

July 26, 2000

ADMINISTRATIVE REGULATION
NUMBER 208

OPR: PERSONNEL

POSITIVE (PROGRESSIVE) EMPLOYEE DISCIPLINE

I. POLICY

- A. All elements of the Department of Corrections shall implement this regulation for the administration of a positive, progressive employee discipline program in this department.
- B. Employee disciplinary action will occur within the principles of progressive discipline, which involves steps of discipline to be used to correct negative behavior or poor job performance.
- C. Offenses will be identified according to Groups with Group I denoting minor offenses, Group II denoting more severe offenses not resulting in an issue of significant consequences, Group III and Group IV denoting serious offenses resulting in significant consequences and Group IV which results in dismissal on the first offense.

II. GENERAL

- A. Progressive discipline is a form of positive discipline. It is a way for the supervisor to bring awareness to employees of their weaknesses in a job-related area. This allows an employee the opportunity to change the undesired behavior. The objective, then, of progressive discipline is a change in an employee's behavior toward the desired result.
- B. The word discipline is derived from a Latin word meaning "to teach". Therefore, the structure of DOC progressive discipline combines this teaching principle with certain basic steps. The basic steps involved in progressive discipline include:
 - 1. Inform employees of expectations. Supervisors must take reasonable actions to ensure that employees are informed of their responsibilities.
 - 2. When an employee is not meeting expectations/standards the supervisor at his/her discretion, in a positive, non-threatening manner, may inform the employee of



shortcomings, remind employee of expectations, and how to meet them or may by-pass this step and apply a group sanction.

1. If the employee's behavior/work performance does not change/improve, the supervisor may decide that informal Supervisory Instruction (SI) is required, see Annex B. The supervisor should at that time inform the employee that continued substandard performance/behavior will result in the use of formal corrective action.
4. If the substandard behavior/work performance continues, the supervisor must resort to formal discipline, beginning with a Warning, see Annex B. If an employee receives a Warning during an evaluation period, it must be noted on the employee's annual evaluation in the Work Habits Section and included in the Disciplinary Action Section. Warnings are not included in the disciplinary score on evaluations. Documentation should include the disciplinary step taken, the date of the action, and the reason/nature of unwanted behavior or performance.
5. If the substandard performance continues to persist, the supervisor must move to the next appropriate level of progressive discipline. This is usually a Written Reprimand, see Annex C. Employees who receive a Written Reprimand during an evaluation period will have their annual evaluation score reduced by 7 points. A copy of the Written Reprimand must be forwarded to DOC Personnel along with the Annual Evaluation Form. A Warden/Division Head, or higher supervisor, in an employee's chain of supervision has the authority to impose a Written Reprimand. Employees should be advised that continued substandard performance will result in more severe disciplinary action.
6. If the substandard performance continues, the supervisor must resort to suspension from duty without pay, see Annex E. Employees who receive a suspension during an evaluation period will have their annual evaluation score reduced by 17 points. A copy of the suspension letter should be forwarded to DOC Personnel along with the Annual Evaluation Form. Only the Commissioner through his original signature as the appointing authority is authorized to impose a suspension.
7. Dismissal is the last step in progressive discipline. This step should be taken only when an employee has failed to correct performance/behavior using the previous disciplinary steps or when an employee violates a rule of such a nature as to require, dismissal, i.e. positive drug screen. It should be used when an employee either cannot or will not perform to meet job responsibilities. Recommendations for dismissal should be sent to DOC Personnel for review and will be forwarded to the Commissioner's office, see Annex I. Only the Commissioner through his original signature as the appointing authority is authorized to impose a dismissal.
8. Supervisors should carefully review this regulation and become familiar with its contents in order to properly implement disciplinary action in a positive encouraging manner. Supervisory communication and discretion is essential in successfully executing this regulation. Employees should be educated regarding the steps involved in implementing a positive discipline program.

C. Supervisors shall use the discipline system hand-in-hand with the performance appraisal system. These are the two most important management tools a supervisor possesses. Some supervisors try to use the appraisal system to discipline an employee. Their thought is that if an employee has an undesirable behavior, the best way to handle the situation is to threaten or actually give an employee a lower score on the performance appraisal. Appraisal is not the discipline tool. Performance appraisal is simply a mirror that should reflect what has occurred during the rating period. If discipline has occurred, behavior/performance warranting the corrective action must be documented on the appraisal form, and in some instances must be attached to the form. This would, obviously, lower the appraisal score, but only as a reflection of what has occurred during the preceding year. Positive discipline is the corrective tool to use when infractions occur in work habits or when a weakness exists in the performance of work responsibilities. A maximum of 17 points can be deducted for disciplinary actions per evaluation period.

D. Guidelines for Corrective Actions:

1. Set the example.
2. Provide training when appropriate.
3. Implement regulations consistently and objectively.
4. Use progressive discipline when behavior/performance violates a rule, regulation, procedure, standard, etc.
5. Eliminate the appearance of favoritism by fairly and equitably implementing rules and regulations.
6. Misconduct should be thoroughly evaluated before corrective action is taken.
7. Document employee's performance/behavior whether positive or negative in nature.

III. PROCEDURES

A. Offenses. Supervisors may use discretion in executing all disciplinary action. The severity of the offense and/or the number of offenses should determine the level/severity of disciplinary action in a stated period of time. The employee's work history, length of service and any disciplinary action within the past twelve months should be considered in determining the penalty. It is important for a supervisor to have adequate justification when a decision is made to offer a lesser or a more severe penalty. Offenses are grouped as follows.

1. Group I
 - a. Offenses of a minor nature that normally result in progressive disciplinary action.

b. Corrective Action for Group I Offenses:

- (1) Supervisory Instruction (SI) (Discretion)
- (2) Warning (Will reflect on the employee's Performance Appraisal without a point penalty)
 - (a) Violations of safety rules which do not endanger life or property.
 - (b) Abuse or misuse of equipment, not causing damages.
 - (c) Conviction for a minor traffic offense while driving a State or public use vehicle.
 - (d) Unauthorized use of telephones, bulletin boards, or other State property.
 - (e) Participation in unauthorized activity of a minor nature at the work place and/or improper use of duty time.
 - (f) Deviation from policies, procedures, regulations, etc.
 - (g) Use of abusive or threatening language to other employees, inmates or the public.
 - (h) Failure to follow proper notification procedures when calling in, i.e., tardy, absences.
 - (i) Tardiness and unexcused absences. (See AR #220)

Repeated abuse of any Group I offense may result in Group II corrective action. Group I offenses shall remain active for one year from the date of corrective action. An employee's work history, annual evaluations and any disciplinary action within the last twelve months should be evaluated in determining the penalty.

2. Group II

- a. Offenses that are more severe than Group I and not resulting in an issue of significant consequences.
- b. Corrective Action for Group II Offenses:
 - (1) Warning (Will reflect on the employee's Performance Appraisal without a point penalty)
 - (2) Written Reprimand (7 point deduction on employee's Performance Appraisal)
 - (a) Failure to perform job properly, not resulting in actual consequences.

- (b) Failure to follow a supervisor's instructions; noncompliance with policies and procedures.
- (c) Leaving assigned post and/or work station before the end of the shift/work day without permission from proper authority or proper relief and no serious consequences occur.
- (d) Disagreeable behavior, including a lack of cooperation.
- (e) Failure to immediately report to the proper authority (supervisor) the violation of any rule, practice, or policy that results in minor consequences.
- (f) Violation of security regulations/procedures when the potential consequences are serious, but consequences do not actually occur.
- (g) Inattention to the job.
- (h) Taking into an institution any article, item, or property which is not specifically authorized by regulation, or without the approval of the Warden.
- (i) Serious violations of other rules, procedures, laws, or reasonable conduct expectations.
- (j) Tardiness and unexcused absences. (See AR # 220)
- (k) Non-compliance with policies, procedures, regulations, etc.

Repeated abuse of any Group II Offense may result in Group III corrective action. Group II offenses shall remain active for one year from the date of corrective action. An employee's work history, annual evaluations and any disciplinary action within the last twelve months should be evaluated in determining the penalty.

3. Group III

- a. Offenses that are serious and/or result in serious consequences.
- b. Corrective Action for Group III Offenses:
 - (1) Written Reprimand (7 point deduction on employee's Performance Appraisal)
 - (2) Suspension (5 to 15 days - 17 point deduction on employee's Performance Appraisal)
 - (3) Demotion
 - (4) Dismissal

- (a) Fighting, assault, physical violence or disruptive behavior.
- (b) Theft or unauthorized possession of DOC or another individual's property.
- (c) Leaving assigned post and/or work station before the end of the shift/workday without permission from proper authority or proper relief, resulting in severe consequences.
- (d) Tampering with a drug screen sample, or any similar action that may invalidate or falsify the test results.
- (e) Sleeping or the appearance of sleeping on duty.
- (f) Abuse or misuse of authority, including but not limited to departmental property and/or DOC identification cards/items.
- (g) Harassment as defined in Administrative Regulation # 206.
- (h) Discrimination in employment based upon race, religion, color, age, sex, national origin or disability. (See Administrative Regulation #206)
- (i) Failure to immediately inform and provide a written report to the Commissioner, through COS II/Division Head or above, concerning any incident of arrest for any misdemeanor, DUI, or felony, except minor traffic violations, or when required to appear as a defendant in any criminal court.
- (j) Abusive or excessive physical force in dealing with inmates.
- (k) Refusal of a supervisor's instruction to remain on duty during a shortage of personnel situation and/or an emergency situation.
- (l) Borrowing/receiving money, or other items from, or giving money/items to inmates or an inmate's family. Giving preferential treatment to an inmate(s), corresponding with an inmate, or an inmate's family, in any capacity that is not officially required and in the line of duty.
- (m) Failure to report, or violation of safety/security rules that result in injury to persons, or significant damage to property.
- (n) Conduct that is disgraceful, on or off the job, that does adversely affect an employee's effectiveness on the job.
- (o) Refusal to submit to screening or under the influence of alcohol or other substances on the job which interferes with the discharge of assigned duties.

- (p) Failure to meet and/or maintain APOSTC standards, when applicable.
- (q) Gross negligence that allows an inmate(s) to escape.
- (r) Refusal to submit to personal search, or search of personal property, or vehicle on institutional property, when required by proper authority.
- (s) Possession or use of firearms, weapons, explosives, or other dangerous items, except on duty and in designated areas and as authorized in regulations and/or procedures.
- (t) Lack of cooperation or refusal to give information or verbal/written statements in connection with employment, an investigation, or injury. Giving false information, altering an investigative or incident report, and/or intentionally omitting facts pertinent to the incident.
- (u) Tardiness and unexcused absences. (See Administrative Regulation #220)
- (v) Serious violations of other rules, procedures, laws, or reasonable conduct expectations.

Supervisors should use discretion in recommending any actions noted in Group III and suspension/demotion/dismissal should be recommended only in cases where previous disciplinary action has failed to correct behavior or when the infraction is so serious as to warrant suspension, demotion or dismissal for the first offense. Progressive discipline should be followed in applying disciplinary action. Group III offenses shall remain active for one year from the date of the corrective action. An employee's work history, annual evaluations and disciplinary actions within the last twelve months should be thoroughly reviewed before recommendations are submitted.

4. Group IV

- a. Offenses that will result in Dismissal on the first offense.
 - (1) Possession of drugs or a positive drug screen.
 - (2) Deliberate breach of security resulting in escape, riot, etc.
 - (3) Conviction for a felony (Title 36, Section 36-21-46(a), Code of Alabama, 1975) that would disqualify an individual from employment in the classification in which employed or a conviction of a misdemeanor crime of domestic violence.

5. Other Authorized Personnel Action(s)

a. Job Abandonment

State Personnel Board Rule 670-x-19-.01(k) – consists of three (3) days of unexcused, unreported absence.

Procedure: An employee who abandons his/her job will not be allowed to return to work. The Warden/Division Head will send a letter, similar to Annex G, by certified mail (return receipt requested) to the employee. If no reply is received from the employee within seven (7) calendar days, the Warden/Division Head will notify the Department Personnel Director, who will prepare a Letter of Dismissal and forward it through channels for approval/signature by the Commissioner. The Warden/Division Head will forward substantiating documents to the DOC Personnel Director as soon as possible but no later than three (3) work days.

If a reply is received within seven (7) calendar days, the Warden/Division Head shall consider the information submitted and impose/recommend appropriate disciplinary action.

b. Demotions

Demotions may occur with the approval of the appointing authority and State Personnel under the following circumstances. Wardens/Division Heads may recommend an employee be demoted after a thorough review of the employee's work history, annual evaluations and disciplinary actions.

- (1) Employees may voluntarily request a demotion to a lower classification.
- (2) Involuntary demotions may occur during a departmental layoff.
- (3) The appointing authority may direct a demotion to a job classification more comparable to the employee's level of performance. In cases where demotions are directed, the appointing authority may use this action in lieu of dismissal or when its deemed necessary for the good of the Department.

c. Action initiated

- (1) A demotion action is initiated by a Warden/Division Head by preparing a written notice of the intent to recommend demotion (see sample letter – Annex H) to the employee. Concurrently, the Warden/Division Head will fax a copy of the letter to the Department's Personnel Director, who will schedule a hearing officer, and notify the Warden/Division Head of the time, date, and location by E-mail. The Warden/Division Head will inform the employee of this information by copy of E-mail.

(2) The written notice must state the charges in sufficient detail to permit the employee to prepare for the hearing.

(a) A person designated under procedures approved by the Commissioner will conduct a hearing to receive information in support of and against the reasons for the demotion. This person will evaluate the information and make a recommendation to the Commissioner.

(b) Employees may choose to be represented at their own expense, and may call witnesses who have direct knowledge of the actions/incidents upon which the charges are based. Employees may also present evidence during the hearing.

(c) The employee may elect to waive a hearing (Annex I) and accept the action recommended by the Warden/Division Head, subject to approval by the Commissioner.

(d) The Commissioner will consider the recommendation of the Warden/Division Head, information presented during the hearing and the findings of the hearing officer, as provided in the hearing officer's record of hearing, and approve the recommendation, approve lesser discipline, specify that no action is to be taken, or return the recommendation to the Warden/Division Head for another hearing. If the demotion stands, a copy will be sent to the State Personnel Department for final approval.

B. Corrective Action History. Each Warden/Division Head will ensure that a Corrective Action History Record (Annex A) is maintained in the file of all employees who have received corrective action. This form is retained as one of the first items seen when opening the file. Supervisory personnel will review the Corrective Action History Record before deciding on the appropriate disciplinary action for any employee. Supervisors must remain alert to the advantages of progressive discipline and any developing trends (positive or negative) in the employee's behavior. Use the minimum action necessary to correct behavior and prevent recurrence of the infraction, within the published guidelines/schedules in this and other regulations.

C. Supervisory Instruction is not disciplinary action. The immediate supervisor must record details regarding the incident/occurrence on DOC Form N008 (Annex B) and distribute as indicated on the form. This action will not be noted in the disciplinary action section on the employee's annual evaluation, nor under the work habits section.

D. Warning

1. The supervisor will conduct the warning in a private setting and without embarrassment to the employee. Another supervisor may attend as a witness, but normally a non-supervisory employee, or other person, should not attend.

2. The supervisor will inform the employee of the specific offense and give the employee an opportunity to explain or respond.

3. The supervisor will record the basic facts of the discussion, reason for the Warning, and corrective action on DOC Form N008 (Annex B). This information will also be noted in the disciplinary action section on the employee's annual evaluation and under the work habits section.
4. Supervisors must inform the employees that they are imposing the first step of progressive discipline.

E. Written Reprimand

1. The Warden/Division Head will conduct the Reprimand in a private setting and without embarrassment to the employee. Another supervisor may attend as a witness, but normally a non-supervisory employee, or other person, should not attend.
2. The Warden/Division Head will inform the employee of the specific offense and give the employee an opportunity to explain or respond.
3. The Warden/Division Head will complete DOC Form N009 (Annex C to AR 208) to impose a Written Reprimand.
4. The Warden/Division Head will inform the employee that after receipt of the Written Reprimand the employee has five calendar days to submit a written reply/explanation.
5. After considering the employee's reply/explanation, the Warden/Division Head decides if the Written Reprimand will stand. The Warden/Division Head will inform the employee by indicating approval or denial on the employee's rebuttal statement. If the employee fails to submit a Written Rebuttal, within the allotted timeframe, the Written Reprimand will stand. The Warden/Division Head will forward a copy of all correspondence to the Department Personnel Director. If action is implemented, a copy of the Written Reprimand must accompany the employee's annual evaluation with a disciplinary score of 7 points deducted.

F. Suspension

1. Suspension is used only after warnings and reprimands have not been effective or when the gravity of the offense requires more stringent corrective action. A suspension puts an employee in an involuntary non-duty and non-pay status, and results in lost production to the Department, and a financial loss to the employee. During suspensions, an employee does not accrue annual leave, sick leave, longevity for retirement, law enforcement bonus, or service pins.
2. The maximum days an employee can be suspended is fifteen (15) days per infraction.
3. Prior to a suspension, a person designated under procedures approved by the Commissioner will conduct a hearing to receive information in support of and against the reasons for the suspension. The hearing shall be tape recorded. The

Warden/Division Head will retain the tape for two years for future reference. The hearing officer shall, within five work days, forward a record of hearing, similar to the example in Annex D, to the Department's Personnel Director, who will forward it to the Commissioner through the appropriate Deputy Commissioner.

4. Action initiated.

- a. A suspension action is initiated by a Warden/Division Head by preparing a written notice of the intent to recommend suspension (see sample letter – Annex E) to the employee. Concurrently, the Warden/Division Head will fax a copy of the letter to the Department Personnel Director, who will schedule a hearing officer, and notify the Warden/Division Head of the time, date, and location by E-mail. The Warden/Division Head will inform the employee of this information by copy of the E-mail.
- b. The written notice must state the charges in sufficient detail to permit the employee to prepare for the hearing.
 - (1) A person designated under procedures approved by the Commissioner will conduct a hearing to receive information in support of and against the reasons for the suspension. This person will evaluate the information and make a recommendation to the Commissioner.
 - (2) Employees may choose to be represented at their own expense, and may call witnesses who have direct knowledge of the actions/incidents upon which the charges are based. Employees may also present evidence during the hearing.
 - (3) The employee may elect to waive a hearing (Annex F) and accept the action recommended by the Warden/Division Head, subject to approval by the Commissioner. A suspension imposed through waiver, or otherwise, includes a stipulation that an employee will not be recommended for promotion until completion of one year of creditable service commencing after the period of suspension.
 - (4) The Commissioner will consider the recommendation of the Warden/Division Head, information presented during the hearing and the findings of the hearing officer, as provided in the hearing officer's record of hearing, and approve the recommendation, approve lesser discipline, specify that no action is to be taken, or return the recommendation to the Warden/Division Head for another hearing. If the suspension stands, a copy of the suspension letter must accompany the employee's annual evaluation with a disciplinary score of 17 points deducted.

G. Dismissal

1. In recent years, the U.S. Supreme Court has held that where the State provides full post-termination due process, a pre-termination hearing need not be elaborate. Adequate post-termination due process through a full, adversarial, post-termination evidentiary hearing is provided by the State Personnel Board.

2. The following procedures shall be followed with regard to the dismissal of an employee and the appropriate departmental official shall give the employee an advance written notice of his intent to recommend dismissal see Annex J. The written notice must:
 - a. State the action proposed.
 - b. State the charges in sufficient detail to enable employee to prepare a suitable response to be presented at the pre-dismissal conference.
 - c. Specify which offenses were used in determining corrective action; also, specify which standards, policies, regulations or criteria were violated.
 - d. State that a pre-dismissal conference will be held at least seven (7) days after employee's receipt of notice of intent to recommend dismissal. The purpose of this conference is to allow the employee to respond to the charges, explaining his/her side of alleged charges. Indicate that a reasonable extension may be granted if requested and justified by the employee.
 - e. State that if dismissal is indicated, after the pre-dismissal conference, this recommendation will be made to the Commissioner.
 - f. State that the employee may resign voluntarily in lieu of dismissal at any time prior to the pre-dismissal conference or during the conference, see Annex K.
3. At least seven (7) work days after delivery of notice of intent to recommend dismissal, the recommending official shall meet with the employee to hear the response/explanation. At the conclusion of the conference, a Pre-Dismis-
~~sal Conference Form Memorandum (see Annex L) must be completed and signed by~~
 the employee and the person conducting the conference.
4. If, after the conference, the departmental official decides to continue the recommendation to dismiss, the official will forward the Notice of Intent to Recommend Dismissal and all supporting documentation, including Pre-Dismis-
 sal Conference Form Letter to the Department's Personnel Director. Documentation should include, but is not limited to, copies of SOPs and other directives violated (other than Administrative Regulations) statements, incident reports, and any other document(s) needed to support the charges. It should also include copies of all previous corrective actions.
5. If the departmental official determines that neither dismissal, suspension, nor demotion is indicated, the official may drop the action entirely or impose lesser discipline. If dropped, all correspondence referring to the action will be removed from employee's departmental and institutional personnel records file.
6. Where dismissal is recommended, the Commissioner may approve the dismissal, specify that no action is to be taken, or approve lesser discipline such as a

suspension in which case a hearing would be required.

7. Employees may, at their own expense, have representation at the pre-dismissal conference, but only as an observer, not as a participant.
8. The pre-dismissal conference outlined above is for the purpose of allowing employees to present information to the appropriate departmental official regarding disciplinary action under consideration; i.e., a chance for employees to "tell their side of the story." The discussion is informal. The employee is allowed to present written statements of witnesses or any other information with regard to the charges. With exception of representation, as specified above, attendance and participation by persons other than recommending officials and employee is at the discretion of the recommending official.
9. Nothing in this regulation is intended to abrogate authority granted the Commissioner under Section 36-26-27, Code of Alabama, 1975, and 670-X-18-.02, Rules of the State Personnel Board.
10. Under the provisions of Rules of the State Personnel Board 670-X-18-.02, a permanent employee who has been dismissed may, within ten days after receiving written notice, appeal the dismissal by filing a written answer to the charges with the State Personnel Director, 64 North Union Street, Montgomery, AL 36130.

H. Probationary and Annual Performance Appraisals. (See Guidelines for Performance Appraisal, Annex M, Pages 1-16)

IV. DISSEMINATION OF CONTENTS

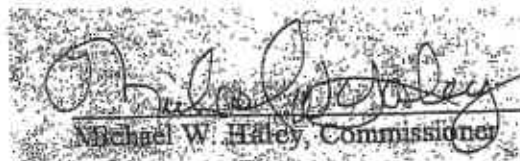
Wardens, Directors, and Department Division Heads are responsible for the dissemination of the contents of this regulation to all employees. Post a copy on bulletin boards for access by all employees.

V. REFERENCES

- A. Rules of the State Personnel Board, State of Alabama.
- B. Department of Corrections' Administrative Regulation 207, Standards of Conduct, Department of Corrections Employees.
- C. Department of Corrections' Administrative Regulation 213, Reporting and Resolution Procedures for Harassment, Sexual Harassment, Complaints, and Grievances.
- D. Department of Corrections' Administrative Regulation 227, Controlled Substances Testing for Employees of the Alabama Department of Corrections.

VI. SUPERSESSION

This regulation supersedes Administrative Regulation 208, dated September 1, 1998, and is effective July 26, 2000.



Michael W. Haley, Commissioner

ANNEXES

ANNEX A	Corrective Action History Record
ANNEX B	Memo for the Record – WARNING/SUPERVISORY INSTRUCTION DOC Form N008
ANNEX C	DOC Written Reprimand – DOC Form N009
ANNEX D	Sample Record of Administrative Hearing
ANNEX E	Sample Notice of Pre-Suspension Hearing
ANNEX F	Sample Format for Waiving Due Process Disciplinary Hearing
ANNEX G	Sample Job Abandonment Letter
ANNEX H	Sample Notice of Intent to Recommend Demotion
ANNEX I	Sample Format for Waiving Demotion Hearing
ANNEX J	Sample Notice of Pre-Dismissal Conference
ANNEX K	Sample Format for Resignation from Employment
ANNEX L	Sample Pre-Dismissal Conference Memorandum
ANNEX M	Guidelines for Performance Appraisal

SUMMARY OF CHANGES

Changes the number of days employees may be suspended during a calendar year, changes the duration of offenses, deletes repetition in offenses listed in Groups I, II, and III, and adds Group IV.

State of Alabama
Alabama Department of Corrections

Kilby Correctional Facility
P.O.Box 150
Mt. Meigs, AL 36057

TERRANCE MCDONNELL
WARDEN III

334-215-6603
Fax-215-6606

March 2, 2005

MEMORANDUM:

FROM: *Terrance McDonnell*
TERRANCE MCDONNELL, WARDEN

TO: COMMISSIONER DONAL CAMPBELL

THRU: DORA JACKSON, ADOC PER. DIRECTOR

SUBJECT: PRE-DISMISSAL CONFERENCE
CO I FELECIA HENDRICKS

The Pre-Dismissal Conference was held in my office today. Attached is the required summary of this meeting.

CO Hendricks did not present any new information at the hearing to change my decision to recommend her for dismissal. This incident of 2-10-05 involving Ms. Hendricks pulling a knife on another employee in Kilby's Parking Lot was investigated by I & I, Inv. Errick Demus. Tape-recorded statements taken by Mr. Demus from the witnesses confirmed that CO Hendricks did pull a knife on another officer and bumped the other female in the chest pushing her backwards. If the other employee had pressed charges against CO Hendricks, she would be facing a felony. If the other officers witnessing this incident had not intervened this problem would have escalated resulting in serious injuries.

It is still my recommendation that CO Hendricks be dismissed from the ADOC.



KILBY CORRECTIONAL FACILITY
PRE-DISMISSAL CONFERENCE MEMORANDUM

TO: DONAL CAMPBELL, COMMISSIONER

FROM: TERRANCE MCDONNELL, WARDEN

SUBJECT: CO I FELICIA HENDRICKS

On 2-18-05 the attached Notice of Intent to Recommend Dismissal was served on CO I Felicia Hendricks. On 3-2-05 at 10:08 AM, CO I Hendricks and I met in my office at Kilby. (Copy of Notice of Intent to Recommend Dismissal is attached.) CO Hendricks had no representative present as an observer.

The employee responded to the Notice of Intent as follows:

I request to remain as a Correctional Officer I and remain at Kilby. I bid for a shift at Kilby for 1 year 1-2-05 to 1-2-06. I have 2 daughters. I am not financially able to drive to another institution. I have a trailer. I will attend an Anger Management Class if deemed necessary.

I did pull a knife for my own defense on 2-10-05 in the parking lot. We both bumped chest to chest.

In addition to her response the employee submitted the following documents (attached):

CO Hendricks presented documents stapled together as her statement/defense for the incident which occurred on 2-10-05 in the Kilby Parking Lot at app. 10:06 PM. The documents stapled included were: Grievance Form for Step 3 signed by CO Hendricks dated 3-1-05; CO Hendricks 7 page statement; Signed statement from CO I Joey Craig; Unsigned statement from CO Roosevelt Pettaway; Unsigned 3 page statement with no notation as to who this was from other than CO Hendricks verbally stating it was from CO I Krammer Penn; A petition for CO Felicia Hendricks to remain with the Department of Corrections signed by 48 KCF and PHS employees; and a Grievance/Complaint Form for Step 1 signed and dated by CO Hendricks on 2-17-05.

Terrence McDonnell 3-2-05
RECOMMENDING OFFICIAL DATE

Felicia Hendricks 3/2/05
EMPLOYEE DATE

Pending resolution of this problem, the employee can be contacted at the following address and telephone number:

Felicia Hendricks
5113 Lobloby Pine Dr.
Montgomery, AL 36116



GRIEVANCE FORM FOR STEP 3
(1 - 3)

DATE OF GRIEVANCE (ACT): 03/01/05
 CHECK IF ADA FILING: _____
 FILE STEP 2: _____
 FILE STEP 3: 3

FILED STEP 1: _____
 COMPLETED STEP 1: _____
 COMPLETED STEP 2: _____
 COMPLETED STEP 3: _____

NAME: Alicia HendricksSSN: 420-98-2608INSTITUTION: Kilby Correctional FacilityCLASSIFICATION: COIYEARS OF SERVICE W/DOC: 5IN CLASSIFICATION: COISUPERVISOR'S NAME: Warden Terrance McDonnell SECT/SHIFT: 2nd

NATURE OF GRIEVANCE: Being considered for dismissal for making a defensive act facing down two female officers and a civilian female who made aggressive moves toward Officer Alicia Hendricks. (See continuation for further details). Inclosures 1 thru 6

REMEDY SOUGHT

For my actions I deserve some form of discipline/guidance but not dismissal. I am willing to attend and complete anger management classes, if desired. I'm a single parent with two young girls to support and I need my job being a single parent and doing a professional job with D.O.C. I request appropriate actions to be taken against the other parties.

Alicia Hendricks
 SIGNATURE OF GRIEVANT

DECISION AT STEP _____

SIGNATURE/TITLE/DATE

On February 10, 2005, at approximately 10:00pm, CO1 Edwin Hendricks waited for CO1 Satya Nelson to ask her (Nelson) about the rumors spreading inside the institution among officers, nursing staff and inmates. As CO1 Nelson approached her car, which both (Hendricks and Nelson) cars were parked side by side, CO1 Hendricks asked CO1 Nelson in a calmly manner, "Do you have anything to say to me?" CO1 Nelson said, "No" in a smug tone. CO1 Hendricks said, "Are you sure?" Then CO1 Hendricks said to Mrs. Nelson then, "Why is you going around her telling people that I stole your money?" CO1 Nelson replied, "You did." CO1 Hendricks told Mrs. Nelson that I (Hendricks) don't have to steal from you, after all the times I let you borrow money. By that time our voices (Hendricks + Nelson) started getting louder. We both (Hendricks + Nelson) were in each other's face yelling and crying. Then CO1 Kramer Dean, Roosevelt Pittman, Jay Craig and stated you'll need to

have that mess alone. CO1 Michael Armstrong observed the incident from his car. CO1 Penn, Patterson and Craig stated you'll need to leave. CO1 Nelson stated, "I'm not leaving and ain't nobody fixing to fight. I need to talk to Mrs. Hendricks and get this off my chest." CO1 Penn stated to CO1 Nelson, "I'll give you \$100 dollars and you'll just leave with this mess. Then CO1 Nelson stated, "The money isn't the issue. Mrs. Hendricks haven't spoke to me or said anything to me in two whole weeks and that's why I thought she had my money." I replied to Mrs. Nelson, "I don't have your money and why would I steal from you anyway. I don't have to steal. By that time Mrs. Nelson said, "You'll leave me alone I just want to talk to Mrs. Hendricks alone." Then after that Mrs. Nelson asked me to get in her (Nelson) car and I did.

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The arguing had ceased as CO1
Hendricks and Nelson was in
his car talking to each other. I
told Mrs. Nelson, I don't have
your money and why would I
steal from you anyway after all the
times I gave you money for gas
and whenever you asked me I
gave it to you and I never
bothered you about paying me
back. Then Mrs. Nelson replied,
"Woman, it's been two weeks and
you haven't spoke to me or said
a word to me." I told Mrs. Nelson
what do you expect for me to
say when you're going around
accusing me of stealing your
money. The right thing you could
have done was come to me
and ask me instead of accusing
me. CO1 Hendricks and Nelson
both apologized to each other. By
that time CO1 Lenny Calhoun, a
jerk friend and a child had
pulled up in front of CO1 Nelson's

4 of 7

car. In which, CO1 Colbert had left the parking lot for home and returned back. CO1 Colbert got out of his (Colbert) car and approached CO1 Nelson's driver door, opened it and stated to CO1 Nelson, "Are you alright?" CO1 Nelson replied, "I'm fine, I just want to talk to Mr. Demichis." Then CO1 Colbert stated to CO1 Nelson, "I'm your friend and I'm not leaving." I told CO1 Nelson that I'll see you later. As I (Demichis) got out the passenger side of Nelson's car while CO1 Colbert was standing at the driver side, CO1 Colbert stated to CO1 Nelson, "I told you that Bitch isn't shit." CO1 Demichis replied to CO1 Colbert "This doesn't have anything to do with you." Then Colbert stated to Demichis, "We (Colbert + Nelson) don't like you anyway." CO1 Demichis replied, "Who cares because I don't like you either."

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Then Colbert walks to her car pulled off her jacket, pulled her shirt out and said calling Sanduck all kinds of Bitcher and Shit, telling me to bring it on. At that time Colbert continued to walk back and forth to her car yelling out loudly. By that time her female friend got out the car and opened the back door, then that's when I grabbed my pocket knife from the inside of my driver door and pulled it out. By that time CO1 Penn had grabbed my hand and took it from me. Then CO1 Colbert started yelling "she's got a knife, Bitch you got to use a knife. I replied to CO1 Penn who was holding me that, "That Bitch ~~is~~ shit." Then CO1 Penn pushed me in my car and closed the door and I CO1 Sanduck pulled off and left, then CO1 Nelson

6087

followed me (Hendricks).

On February 27, 2005 at approximately 10:35 pm, CO1 Hendricks called CO1 Nelson on her (Nelson) cell phone and we talked. CO1 Nelson said she was wondering when I was going to call her. I (Hendricks) told her that I didn't know if you really wanted to talk to me. CO1 Nelson said "I'm not mad at you" and I told her I wasn't mad at her either. Then we talked about a few things and then she said she didn't think that things would have gone this far. She (Nelson) said that she heard that I (Hendricks) could lose my job and she (Nelson) didn't want that to happen. Then I (Hendricks) asked her do you have a problem working with me and she (Nelson)

7087

said "no." But she (Nelson) said that C-1 Colbert said "she (Colbert) didn't want me to lose my job either, but she (Colbert) can't work with me in fear of her (Colbert) life. I asked Mrs Nelson could she write a statement and she did say "yes," she have no problem with that, and that she (Nelson) would get back with me the next morning, but she never did.

Alvin Smith

INCL. 2

On 2-10-05 at approx. 10:23 PM,
 upon ending my tour of duty at
 Kelly Correctional Facility, I & Col
 Craig was heading toward my
 car in the parking lot. Col
 Craig observed Col Felicia Hendrix
 and Col Latoria Nelson getting in
 Col Nelson's car. At approx. 10:23 PM,
 as I & Col Craig began to pull out of
 the parking lot, Col Latoria Robert
 pull up her ^{car} behind me and
 blocked my way out. Col Craig then
 asked Col Robert could she move her
 car for me please. Col Robert then
 told somebody in her car to move
 it. They moved the car & Col
 Craig began to exit the property
 and observed Col Robert walk toward
 Col Nelson's car and open the driver
 side door. Col Craig then drove off
 and did not witness anything else.

For Craig M

DUTY POST LOG

[illegible]

INCL: 4

On February 10, 2005 at approximately 10:02 p.m. after leaving the institution and entering the parking lot. After walking to my car I observed COI Felicia Hendricks and COI Katya Nelson arguing loudly. I immediately grabbed COI Hendricks by the arm and tried to place her in the car. COI Hendricks stated that she was not going anywhere until she gets straight with COI Nelson because she was not a thief. COI Nelson came behind COI Hendricks yelling you got my money because it was in the car and you and I were the only ones in the car. I told COI Nelson to get in her car and drive down the road and to get this settle down the road off of state property. I told them not to do this in front of everybody and that this shit is going to be all over the prison. Both stated that where not going anywhere until they got it straight. I told COI Nelson that if it was over a \$1000 I'll

After arguing about 2 minutes COI Nelson and COI Hendricks got into COI Nelson's car. The loud arguing had ceased. COI Colbert who had left the institution had come back to the parking lot, parked her car in front of COI Nelson's car got out of her car and walked to the driver's side where COI Nelson was sitting yelling "I'm not going to let you jump on my friend and we are not studying you." COI Hendricks got out of the car and said this didn't got nothing to do with you Ms. Colbert. COI Nelson jumped out of the car and told COI Colbert to go home. COI Colbert went back to her car and pulled off her jacket and pulled her shirt out and told COI Hendricks to bring it on. COI Colbert began to walk towards COI Hendricks. COI Hendricks calling her "Bitches and whores." I observed the female civilian in COI Colbert's car open the passenger door and get out and open the back passenger door of COI Colbert's car. COI Colbert continued to walk toward COI Hendricks. COI Nelson was standing next to the passenger's side of COI Hendricks car. COI Hendricks then reached in the driver's side door and grabbed a pocket knife. COI I then immediately grabbed the knife from COI Hendricks and put the knife back in it.

3 of 3
back into her car. CoI Gilbert stated you see that
the bitch had to get a knife for me, CoI Hendrix
had pulled out of the parking lot. CoI Nelson had
immediately followed CoI Hendricks. After the
incident I had ran to assist Lt. Tchernavira Blackmon
who had fallen. After checking on Lt. Blackmon I
departed the parking lot.

**PETITION FOR COI FELICIA HENDRICKS TO
REMAIN WITH THE DEPARTMENT OF
CORRECTIONS**

1. [Signature]
2. Katie Bailey Lpn.
3. COI Calvin Banks
4. Charles Caldwell COI
5. Eric Richardson COI
6. Kim P. COI
7. Kevin Wallace COI
8. Leonard Graves Lpn
9. Frankie Brown COI
10. Dallas King Lpn
11. [Signature]
12. [Signature] COI
13. Latrika Henderson Lpn
14. Daniel Piddock, COI
15. [Signature]
16. Anthony M. Butler, KSA-I
17. [Signature] COI
18. [Signature] COI

21. Alfreda DeLaney LPA

22. J. F. Richardson COX

23. Mary Ann COI

24. Leonard Cannon COI

25. Leonard Cannon COI

26. Tompkins COI

27. To SS COI

28. Robert Young COI

29. B. Clay COI

30. J. H.

31. Ronald S. Gil COI

32. Alfreda DeLaney RN

33. Mary Ann

34. Clara Hall

35. Constance

36. Leonard Young

37. William

38. Yusuf A. Hasan

39. Nathaniel Brooks

40. William

41. Arthur Amer

44. John
45. Mr. Anthony J. Barber
46. Charles J. Barber
47. Sheryl L. Barber
48. Sheryl L. Barber, (pm)
49. _____
50. _____
51. _____
52. _____
53. _____
54. _____
55. _____

GRIVANCE/COMPLAINT FORM FOR STEP I

**

PLEASE CIRCLE CAUSE OF COMPLAINT:

Race Color Sex Religion National Origin Retaliation Age Disability
 Other (specify) Information Clarification

DATE: February 17, 2005NAME: Felicia HendricksSSN: 420-98-2608CLASSIFICATION: Correctional Officer IINSTITUTION: Kilby Section/Shift: 2ndSUPERVISOR'S NAME/POSITION: Tchernavia Blackmon, COSI/ Kenneth Cash, COIIDATE OF OCCURRENCE CAUSING THE COMPLAINT: February 10, 2005

NATURE OF COMPLAINT: On 2-10-05 at approximately 10:05 p.m., in the parking lot at Kilby Prison, Officer Felicia Hendricks was in discussion in Officer Latoya Nelson's vehicle on some money that was lost or disappeared. At approximately 10:14 p.m., I, Officer Hendricks was approached by Officer Lilkenya Colbert and a civilian who was driving her (Colbert) car which had left Kilby Institution and returned. Officer Colbert exited her (Colbert) car and approached Officer Nelson's car and starting making threatening remarks toward Officer Hendricks, who had left Officer Nelson's car for her (Hendricks) car persued by Officers Colbert, Nelson, and an unidentified female who was driving Officer Colbert's car. At approximately 10:15 p.m., Officer Hendricks felt/ threatened by the three individuals and took a small knife out of the driver door of Officer Hendricks' car to ward off the aggression of the three people mentioned above.

REMEDY SOUGHT: A thoroughly investigation of the events on 2-10-05, further information may be obtained from: Officers K. Penn, R. Pettaway, J. Craig, M. Anderson, M. Armstrong which will shed more light on this unusual occurance that may exonerate Officer Hendricks from the alleged allegations. Based on Administrative Regulation # 205, bidding on shift institution and days off was elected for Kilby and Second Shift. Officer Hendricks wish to remain at Kilby based on being a single parent with two daughters and being established in the Montgomery area and having a trailer.

COPY OF STEP AND **

DECISION ATTACHED

DECISION AT STEP *

EMPLOYEE SIGNATURE/DATE

SIGNATURE/TITLE/DATE

**ENTER APPROPRIATE STEP NUMBER AND ATTACH COPY OF PREVIOUS STEP IF
 PROCEEDING TO HIGHER STEP

Case 2:05-cv-00714-MEF-CSC Document 1-2 Filed 08/01/2005 Page 20 of 20

GRIEVANCE/COMPLAINT FORM FOR STEP I

PLEASE CIRCLE CAUSE OF COMPLAINT:

Race Color Sex Religion National Origin Retaliation Age Disability
Other (specify) Information Clarification

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COPY OF STEP AND ***Felicia Hendricks 2/17/05*

DECISION ATTACHED

EMPLOYEE SIGNATURE/DATE

DECISION AT STEP *

SIGNATURE/TITLE/DATE

**ENTER APPROPRIATE STEP NUMBER AND ATTACH COPY OF PREVIOUS STEP IF
PROCEEDING TO HIGHER STEP

ANNEX B

AR206 - February 22, 2000





BOB RILEY
GOVERNOR

State of Alabama
Alabama Department of Corrections

301 S. Ripley Street
P. O. Box 301501
Montgomery, AL 36130



DONAL CAMPBELL
COMMISSIONER

January 24, 2005

ADMINISTRATIVE REGULATION
NUMBER 213

OPR: PERSONNEL

GRIEVANCES

Alabama Department of Corrections Employees

I. GENERAL

This Alabama Department of Corrections (ADOC) Administrative Regulation (AR) establishes responsibilities, policies, and procedures for reporting and resolving employee grievances.

II. POLICY

It is the policy of the ADOC to provide all employees open access to a timely grievance resolution process.

III. DEFINITION(S) AND ACRONYM(S)

- A. Departmental Grievance Officer: An employee designated by the Commissioner to handle grievances.
- B. Grievance: For the purpose of this regulation is defined as any issue of dispute or conflict that an employee may have pertaining to the interpretation and/or application of:
 - 1. ADOC regulations, procedures, or directives that affect an employee's compensation, evaluation, leave, discipline, duty assignment, work hours, and work conditions.
 - 2. Rules of the State Personnel Board or the State Personnel Department's procedure manuals.

IV. RESPONSIBILITIES

- A. The Warden or Division Director is responsible for ensuring compliance with this regulation and educating employees under his/her supervision regarding proper grievance procedures.
- B. The Departmental Grievance Officer and supervisors are responsible for investigating and resolving employee grievances and maintaining applicable records and reports.



- C. The employee is responsible for filing his/her grievance in a timely manner and in accordance with procedures outlined in this regulation.

V. PROCEDURES

- A. Employee grievances shall be handled informally at the lowest level of supervision, whenever possible.
- B. Complaints of harassment or discrimination shall be made in accordance with Administrative Regulation 206, Harassment and Discrimination Policy.
- C. Employee grievances shall be presented in writing on ADOC Form 213, Employee Grievance form, in accordance with the three-step process below:
 - 1. **Step One**: A grievance shall be presented in writing on ADOC Form 213 within five (5) working days of the occurrence of the incident or of learning of the circumstances or conditions which gave rise to the grievance to the immediate supervisor. Extenuating circumstances, if applicable, may be considered should the grievance be presented after the required time period and the reason for late filing should be noted on ADOC Form 213.
 - a. The supervisor shall investigate the grievance and within five (5) working days, after it is presented, render a written response on ADOC Form 213.
 - b. A copy of the Step One grievance and response shall be provided to the Warden or Division Director.
 - 2. **Step Two**: If a grievance at Step One is not resolved or a response is not given within the required time frame, the grievance may be presented to the Warden or Division Director.
 - a. The Step Two grievance shall be presented on ADOC Form 213 within five (5) working days of the supervisor's response or within five (5) days after the supervisor's response was due, whichever comes first. A copy of ADOC Form 213 filed at Step One shall be attached.
 - b. The Warden or Division Director shall conduct an investigation and meet with the employee to resolve the grievance.
 - c. Within seven (7) working days following the receipt of the Step Two grievance, the Warden or Division Director shall render a written response on ADOC Form 213.
 - 3. **Step Three**: If a grievance is not resolved at Step Two or a response is not received within the required time frame, the grievance may be presented to the Commissioner through the Departmental Grievance Officer.

- a. The grievance shall be presented on the ADOC Form 213 for Step Three. Copies of the Step One and Two forms and responses, if any, shall be attached.
- b. The employee shall present the Step Three grievance to the Departmental Grievance Officer within five (5) working days following the deadline for the Warden or Division Director's response.
- c. Within seven (7) working days, the Departmental Grievance Officer shall investigate the grievance and meet with the employee in an attempt to resolve the grievance. If the grievant desires an attorney/representative to be present, the attorney/representative shall be limited to observer status only.
- d. The grievance hearing may be tape recorded by the Departmental Grievance Officer only.
- e. The investigation may include interviews, in person or by telephone, with any person(s) whom the Departmental Grievance Officer deems to have pertinent knowledge.
- f. The appearance of witnesses shall be at the discretion of the Departmental Grievance Officer. The employee filing the grievance shall be allowed to offer written statements of witnesses and any other valid information.
- g. The Departmental Grievance Officer may select an employee assigned to the Personnel Division to assist in resolving grievances at the departmental level.
- h. Within ~~ten~~ (10) working days following the investigation and/or meeting with the employee, the Departmental Grievance Officer shall render a response approved by the Commissioner. The resolution presented to the employee by the Departmental Grievance Officer shall be final.

VI. DISPOSITION

Any forms used will be disposed of and retained according to the Departmental Records Disposition Authority (RDA).

VII. FORMS

ADOC Form 213, Employee Grievance

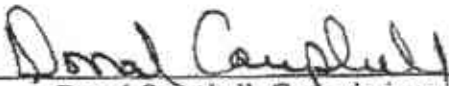
VIII. SUPERCEDES

This regulation supercedes Administrative Regulation 213 dated October 4, 1996, as amended.

IX. PERFORMANCE

This administrative regulation updates departmental policy and procedures pertaining to the reporting and resolution of employee grievances and is based on, but not limited to, the interpretation and application of the laws, regulations, and procedures as amended below:

- A. Title 1, the Code of Alabama, 1975
- B. Title 31, Code of Alabama, 1975
- C. Title 36, Code of Alabama, 1975
- D. Title 29, United States Code
- E. Title 38, United States Code
- F. Rules of the State Personnel Board
- G. State Personnel Department, Personnel Procedures Manual
- H. Family and Medical Leave Act of 1993, State Personnel Department Policy and Procedure
- I. State of Alabama Performance Appraisal Manual
- J. Alabama Department of Corrections' Administrative Regulations
- K. Alabama Department of Corrections' Standard Operating Procedures


Donal Campbell, Commissioner

EMPLOYEE GRIEVANCE

Name _____ Date _____

Institution/Division _____ Job Classification _____

Supervisor's Name _____ Section/Shift _____

Nature of Complaint _____

Remedy Sought _____

Signature of Complainant

If applicable, Reason for Late Filing of Grievance _____

DATE FILED	DATE COMPLETED
Step 1:	Step 1:
Step 2:	Step 2:
Step 3:	Step 3:

Decision at Step: _____

Signature of Responder_____
Date_____
Title

ADOC Form 213 – January 24, 2005



BOB RILEY
GOVERNOR



Donal Campbell
COMMISSIONER

State of Alabama

Alabama Department of Corrections

Research and Planning
P. O. Box 301501
Montgomery, AL 36130-1501

January 27, 2004

ADMINISTRATIVE REGULATION
NUMBER 206

OPR: PERSONNEL

HARASSMENT AND DISCRIMINATION POLICY

I. GENERAL

This Alabama Department of Corrections (ADOC) Administrative Regulation (AR) establishes departmental responsibilities, policies, and complaint procedures for the fair and equitable treatment of all individuals.

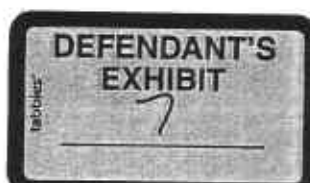
II. POLICY

The ADOC:

- A. Strictly prohibits any form of harassment whether based on sex, race, color, religion, national origin, age, sexual orientation, ancestry, or disability.
- B. Strictly prohibits any form of discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment on the basis of sex, race, color, religion, national origin, age, sexual orientation, ancestry, or disability.
- C. Shall swiftly investigate and seek resolution of any complaint made under this regulation.
- D. Strictly prohibits any form of reprisal or retaliation against complainants under this regulation.

III. DEFINITIONS AND ACRONYM(S)

- A. Harassment: Any discriminatory and unwelcome conduct that is based on an individual's race, color, religion, age, sex, national origin, sexual orientation, ancestry, or disability.



- B. Sexual Harassment: Any unwelcome conduct of a sexual nature, including advances, requests for favors, remarks, sounds, gestures, physical contact, and display or circulation of material, that is subjectively or objectively offensive.
- C. Verbal Harassment: Making statements which contain derogatory descriptions or stereotypes based on race, sex, color, national origin, age, sexual orientation, ancestry, or disability.
- D. Physical Harassment: Pushing, shoving, touching, or other intentional acts committed in whole, or in part, because of the employee's race, sex, color, national origin, age, sexual orientation, ancestry, or disability; and the displaying of signs, pictures, cartoons, written statements or other materials that belittle or discriminate against any employee based on one's race, sex, color, national origin, age, sexual orientation, or disability.
- E. Discrimination: Adverse treatment or consideration based on class or category rather than individual merit.
- F. Individual: Employees, contractors, volunteers, vendors, customers, visitors, and other persons involved with the ADOC.
- G. Reprisal/Retaliation: Any punishment, adverse consideration, or undeserved treatment as a result of filing a complaint.
- H. Equal Employment Opportunity (EEO) Officer: An employee designated by the department to review, investigate, and resolve, complaints of harassment and discrimination.

IV. RESPONSIBILITIES

- A. Wardens and Divisional Directors are responsible for ensuring the implementation and adherence to this policy.
- B. ADOC employees and other affected individuals are responsible for reporting incidents of harassment and discrimination as prescribed in the procedures below.
- C. The Equal Employment Opportunity Officer will receive, review, investigate, and seek resolutions to complaints of harassment and discrimination.

V. PROCEDURES

- A. Each Warden and Division Director shall designate a supervisory level employee to serve in an EEO Officer capacity.

- B. Any individual who believes he/she has been harassed or has witnessed harassment, or believes that adverse decisions concerning his/her employment were based on unlawful discrimination, shall:
1. Promptly report the incident to the Institutional/Divisional EEO Officer or supervisor.
 2. In the event the alleged perpetrator is the Institutional/Divisional EEO Officer, the complainant shall report to the Departmental EEO Officer or the ADOC Personnel Division Director.
 3. Any allegations regarding the Departmental EEO Officer or the Personnel Division Director shall be reported to the Commissioner.
 4. If an individual feels that the Commissioner of the ADOC has subjected him/her to unlawful discrimination or harassment, he/she should report these allegations to the Director of the Alabama State Personnel Department.
- C. Under no circumstances shall an individual's complaint of harassment or discrimination be filed with or appealed to the alleged perpetrator.
- D. Reports of complaint, if possible, should be in writing, but may be oral.
- E. The filing and investigation of complaints shall consist of three (3) steps.
1. **Step One:** The complaint should be reported to the Institutional/Divisional EEO Officer or immediate supervisor in Writing outlining the problem.
 - a. Employees must use ADOC Form 206, Harassment and Discrimination Complaint Form.
 - b. The complaint must be submitted within five (5) working days of the occurrence of the incident causing the complaint. In addition to the complaint form, the employee may present written statements or affidavits from witnesses.
 - c. The Institutional/Divisional EEO Officer or the immediate supervisor must respond to the complaint within five (5) working days.
 2. **Step Two:** If the employee is not satisfied with the Institutional/Divisional EEO Officer or immediate supervisor's response, he/she may, within five (5) working days, file an appeal to the Warden or Division Director.

- a. The Step two appeal must be made on ADOC Form 206. A copy of ADOC Form 206 filed at Step One should be attached.
 - b. The Warden or Division Director will, after investigating the complaint, respond to the employee's complaint within seven (7) working days.
3. **Step Three:** An employee who is not satisfied with the response at Step Two may appeal to the Departmental EEO Officer or the Personnel Division Director within five (5) working days after receiving the Step Two response.
 - a. The Step Three appeal must be filed an ADOC Form 206. A copy of ADOC Form 206 filed at Step One and Two should be attached.
 - b. The Departmental EEO Officer or the Personnel Division Director will, after review of the complaint, determine whether to meet with the employee to discuss the complaint or determine if further investigation is appropriate.
 - c. Following the meeting/investigation, the Departmental EEO Officer or the Personnel Division Director will submit his/her findings along with a recommendation for solution to the Commissioner within seven (7) working days.
- F. Any employee who desires to file a complaint of discrimination or harassment against an immediate or a higher level supervisor can by-pass Steps One and Two, and file the complaint at Step Three. When using this special complaint procedure, the employee must provide enough information to justify bypassing Steps One and Two.
- G. An applicant or employee, who is dissatisfied with the complaint resolution provided by the Commissioner, or has reason to believe that he/she has been discriminated against because of race, sex, color, gender, national origin, sexual orientation, or disability, within the work force, may appeal the Department's decision directly to the State Personnel Department Director.
- H. The employee or supervisor who receives an oral complaint of harassment or discrimination shall promptly document and forward it to the Institutional/Divisional EEO Officer, Warden, or Division Director.
- I. If the complaint is against the Institutional/Divisional EEO Officer, Warden, or Division Director, the receiving employee or supervisor shall

forward the documentation to the Departmental EEO Officer or the Personnel Division Director.

VI. DISPOSITION

The disposition of forms prescribed by this regulation will be in accordance with the Department's Records Disposition Authority.

VII. FORMS

This regulation implements ADOC Form 206, Harassment and Discrimination Complaint Form.

VIII. SUPERCEDES

This Administrative Regulation supersedes Administrative Regulation 206 dated February 22, 2000, as amended.

IX. PERFORMANCE

This administrative regulation updates policy and procedures concerning harassment and discrimination of employees or otherwise affected individuals and is based on the laws below:

- A. Title VII of the Civil Rights Act of 1964, as amended.
- B. Age Discrimination in Employment Act of 1967, as amended.
- C. Rehabilitation Act of 1973, as amended.
- D. The Americans with Disabilities Act of 1990

ANNEXES:
ADOC Form 206


Donal Campbell, Commissioner

HARASSMENT AND DISCRIMINATION
Complaint Form

Name _____ Date _____

Institution/Division _____ Job Classification _____

Supervisor's Name _____ Section/Shift _____

Nature of complaint _____

Remedy Sought _____

Signature of Complainant

Date Filed	Date Completed
Step 1:	Step 1:
Step 2:	Step 2:
Step 3:	Step 3:

Decision at Step: _____

Signature of Responder

Date

Title

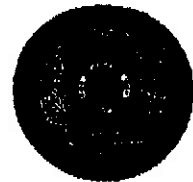
ADOC Form 206
Revision Date: January 2004



BOB RILEY
GOVERNOR

State of Alabama
Alabama Department of Corrections

301 South Ripley Street
P. O. Box 301501
Montgomery, AL 36130



DONAL CAMPBELL
COMMISSIONER

March 4, 2005

Ms. Felicia S. Hendricks, CO I
Kilby Correctional Facility
Montgomery, AL 36057

Dear Ms. Hendricks:

On March 2, 2005 you appeared at a Pre-Dismissal Conference held by Warden Terrance McDonnell to answer the following charges against you:

1. Employees shall observe all laws, rules and regulations. (Administrative Regulation 207, Section V, Paragraph A7)
2. Employees shall uphold, with integrity, the public's trust involved in their positions. (Administrative Regulation 207, Section V, Paragraph A9)
3. Each employee's conduct shall, at all times, be consistent with the maintenance of proper security and welfare of the institution and of the inmates under his/her supervision. (Administrative Regulation 207, Section V, Paragraph B)
4. Employees shall not carry any weapons, tear gas, ammunition, or blackjack into the institution or on the grounds of any ADOC state property, except as authorized by the Warden/Division Director. (Administrative Regulation 207, Section V, Paragraph C11)

In determining the appropriate disciplinary action for violations of Administrative Regulation 207, I have also considered the following offenses under Administrative Regulation 208:

1. Fighting, assault, physical violence and disruptive behavior. (Administrative Regulation 208, Section III, Group III Offenses, Paragraph A.3.b.(4)(a))



Page 2

Ms. Felicia S. Hendricks

2. Conduct that is disgraceful, on or off the job, that does adversely affect employee's effectiveness on the job. (Administrative Regulation 208, Section III, Group III Offenses, Paragraph A.3.b.(4)(n))
3. Possession or use of firearms, weapons, explosives, or other dangerous items, except on duty and in designated areas and as authorized in regulations and/or procedures. (Administrative Regulation 208, Section III, Group III Offenses, Paragraph A.3.b.(4)(s))
4. Serious violations of other rules, procedures, laws, or reasonable conduct expectations. (Administrative Regulation 208, Section III, Group III Offenses, Paragraph A.3.b.(4)(v))

On or about February 10, 2005 it was reported that a disturbance occurred in the parking lot of Kilby Correctional Facility that involved you and two (2) other officers. Voices were heard screaming and cursing while another officer was attempting to restrain you.

An investigation on the above referenced incident revealed that you pulled a knife on one (1) of the officers in the Kilby parking lot. You admitted to one (1) of the department's investigator that you did pull the knife on the officer and turned the knife in to him. You further admitted that you bullied the officer by brushing up against her with your chest while pushing her backwards. There were numerous witnesses to this incident regarding your involvement in pulling the knife and/or physical and verbal confrontation on two (2) officers.

A review of your overall work record reveals no active or previous disciplinary action.

Having reviewed the Warden's Notice of Intent to Recommend Dismissal and associated documents, your overall work record, and the defense you offered at the Pre-Dismissal Conference, I do hereby order your dismissal, for the good of the service, to be effective the close of business March 4, 2005.

I regret this action is necessary, but Alabama Department of Corrections' employees are expected to maintain reasonable standards of conduct. Your failure to meet these standards cannot be condoned.

Page 3

Ms. Felicia S. Hendricks

If you think your dismissal is unwarranted, you may appeal the dismissal to the State Personnel Department within ten (10) days by filing an answer to the charges made against you. Such request should be forwarded to the State Personnel Department, Personnel Director, Folsom Administrative Building, 300 Folsom Administrative Building, Montgomery, Alabama 36130-4100.

Sincerely,



Donal Campbell
Commissioner

DC:ne

CC: Mr. Tommy Flowers, State Personnel Director
Warden Terrance McDonnell, Kilby Correctional Facility
Mrs. Dora Jackson, Departmental Personnel Director

Case 2:05-cv-00714-MEF-CSC Document 1-2 Filed 08/01/2005 Page 1 of 20

DATE: 03-17-05
 NAME: Hendricks Felicia Suzette CLASSIFICATION: Correctional Officer I
 Last First Middle

INSTITUTION: Kilby SECTION/SHIFT: 2nd
 YEARS WITH DEPARTMENT OF CORRECTIONS: 4 1/2 YEARS IN CLASSIFICATION: 4 1/2

SUPERVISOR'S NAME: Warden Terrance McDaniel DATE OF ALLEGED INCIDENT OR MISAPPLICATION OF RULE OR REGULATION: 03-04-05

NATURE OF GRIEVANCE: Being singled out/dismissed for having a small pocket knife on state property; numerous of officers at Kilby have been found to have knives and other unauthorized items inside and on state property. Supervisors had informed the officers to take their weapons back to the cars and return to work. Names and events will be explained in person. (SEE CONTINUATION)
 REMEDY SOUGHT: The same type of discipline be enforced against each

officer the same way. Be advised this is the first time Officer Hendricks have had any form of discipline. See complaint form 1, 2 and 3 for further details. (SEE CONTINUATION)
 DECISION RECEIVED AT STEP ONE: _____

DECISION RECEIVED AT STEP TWO: _____

Felicia Hendricks 3/17/05
 SIGNATURE OF GRIEVANT

DECISION AT STEP THREE: _____

 SIGNATURE/TITLE/DATE



§ 13A-6-20

CRIMINAL CODE

§ 13A-6-20

§ 13A-6-20

Criminal liability for injury or death caused by operation of pleasure boat. 8 ALR4th 886.

Accused's right, in homicide case, to have jury instructed as to both unintentional shooting and self-defense. 15 ALR4th 983.

Validity and construction of statute defining homicide by conduct manifesting "depraved

indifference." 25 ALR4th 311.

Criminal liability for death of another as result of accused's attempt to kill self or assist in another's suicide. 40 ALR4th 702.

Alcohol-related vehicular homicide: nature and elements of offense. 64 ALR4th 166.

ARTICLE 2.

ASSAULTS.

§ 13A-6-20. Assault in the first degree.

(a) A person commits the crime of assault in the first degree if:

(1) With intent to cause serious physical injury to another person, he causes serious physical injury to any person by means of a deadly weapon or a dangerous instrument; or

(2) With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such an injury to any person; or

(3) Under circumstances manifesting extreme indifference to the value of human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to any person; or

(4) In the course of and in furtherance of the commission or attempted commission of arson in the first degree, burglary in the first or second degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, sodomy in the first degree or any other felony clearly dangerous to human life, or of immediate flight therefrom, he causes a serious physical injury to another person; or

(5) While driving under the influence of alcohol or a controlled substance or any combination thereof in violation of Section 32-5A-191 he causes serious bodily injury to the person of another with a motor vehicle.

(b) Assault in the first degree is a Class B felony. (Acts 1977, No. 607, p. 812, § 2101; Acts 1987, No. 87-712, p. 1259.)

Cross references. — See Commentary following § 13A-6-22. As to culpable mental states, see § 13A-2-2. As to kidnapping in the first degree, see § 13A-6-43. As to rape in the first degree, see § 13A-6-61. As to sodomy in the first degree, see § 13A-6-63. As to burglary in the first and second degrees, see §§ 13A-7-5

and 13A-7-6. As to arson in the first degree, see § 13A-7-41. As to robbery, see §§ 13A-8-41 through 13A-8-43. As to escape in the first degree, see § 13A-10-31. As to committing offense when armed with pistol, see § 13A-11-71.

- I. General Consideration.
- II. Pleading and Practice.
- III. Decisions Under Prior Law.
 - A. In General.
 - B. Deadly Weapon.
 - C. Mayhem.

I. GENERAL

"Intent to kill under §§ 13A-4-1 and 13A-4-2" "intent to kill" is weapon and/or state which his intent State, 536 So. 2d

Meaning of "Substantial subdivision (9) of just any risk of death was likely danger of death established. War. Crim. App. 1991

The test of whether the victim require that dea Ware v. State, 55 1991).

Fists as a dangerous instrument, see (Ala. Crim. App.

Fists may be dangerous instrument circumstances as v. State, 555 So. 2d modified on other (Ala. 1991).

Defendant's intent the two and one considered a dangerous instrument. Ray v. Crim. App. 1991.

Assault in the first degree Assault in the first degree injury rather than Poster v. State, (Ala. 1991).

For case allowing his opinion that serious injury to So. 2d 582 (Ala. 1991).

In Alabama, offense of attempted assault statutory definition the attempt. Lee v. Crim. App. 1991.

Intent to cause serious injury was jury question evidence showed 25 rounds from the shooting stopped in a wooded area as heard, whether the victim serious injury for the jury 1238 (Ala. Crim. App. 1991).

Criminal intent inferred from circum-



§ 13A-6-21

CRIMINAL CODE

§ 13A-6-21

(1975), cert. denied, 295 Ala. 398, 325 So. 2d 546 (1976).

Use of a fist is not the use of a weapon. Cozart v. State, 42 Ala. App. 535, 171 So. 2d 77 (1964), cert. denied, 277 Ala. 698, 171 So. 2d 84 (1965).

C. Mayhem.

Injury must have disfigured. — The injury must have disfigured in such manner as to be apparent upon ordinary observation, as distinguished from a wounding which simply marred the member. State v. Abram, 10 Ala. 928 (1847); Green v. State, 151 Ala. 14, 44 So. 194 (1907).

And must have been permanent. — Former § 13-1-7 contemplated permanent injury, such as would constitute mayhem at common law. Temporary disabling of a member was not sufficient to constitute the offense. State v. Briley, 8 Port. 472 (1839).

Intent must have existed. — The essential ingredients of the offense denounced by former § 13-1-7, the necessary disfigurement of the

person maimed being given, were that the act was done without authority of law and with evil intent and by design. Green v. State, 151 Ala. 14, 44 So. 194 (1907).

Intent could be inferred. — A specific intent to maim was generally held an essential ingredient of the offense of mayhem; but such intent could be inferred or presumed if the act was done deliberately and the disfigurement was reasonably to be apprehended as the natural and probable consequence of the act. Patterson v. State, 30 Ala. App. 135, 1 So. 2d 759 (1941).

Self-defense might be available in justification. — Self-defense might be available in justification of the act which otherwise would be mayhem providing, of course, the resistance was proportionate to the injury offered. Green v. State, 151 Ala. 14, 44 So. 194 (1907). (As to use of force in defense of a person, see § 13A-3-23.)

Castration was a kind of mayhem. Pritchett v. State, 40 Ala. App. 498, 117 So. 2d 345 (1959).

§ 13A-6-21. Assault in the second degree.

(a) A person commits the crime of assault in the second degree if the person does any of the following:

(1) With intent to cause serious physical injury to another person, he or she causes serious physical injury to any person.

(2) With intent to cause physical injury to another person, he or she causes physical injury to any person by means of a deadly weapon or a dangerous instrument.

(3) He or she recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument.

(4) With intent to prevent a peace officer, as defined in Section 36-21-60, or emergency medical personnel or a firefighter from performing a lawful duty, he or she intends to cause serious physical injury and he or she causes serious physical injury to any person.

(5) With intent to cause serious physical injury to a teacher or to an employee of a public educational institution during or as a result of the performance of his or her duty, he or she causes physical injury to any person.

(6) For a purpose other than lawful medical or therapeutic treatment, he or she intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to him or her, without his or her consent, a drug, substance or preparation capable of producing the intended harm.

(b) Assault in the second degree is a Class C felony. (Acts 1977, No. 607, p. 812, § 2102; Acts 1994, 1st Ex. Sess., No. 94-794, § 1.)

§ 13A-6-21

The 1994 act, 1994, in subsequent language following, added made nonsubstantive

Cross reference following § 13A-6-21 states, see § 13-1-7 when armed with

Subdivision more than subdivision first two require the latter require acted recklessly 981 (Ala. Crim.

Assault in the of moral turpitude witness in Alabama 2d 708 (Ala. Cr. App. 1993).

Proof that with intent to language of suit the state was specifically act physical injury. 1116 (Ala. Crim.

Issue of intent

the victim, but seriously injured intent of intent prior altercation the issue of assault in the 527 So. 2d 134

Proof of serious

necessary. — Pursuant necessary that victim suffered instead, the prose victim suffered deadly weapon lack Jackson v. Crim. App. 198 (Ala. 1988), rev. Ex parte State

Proof of causation injury not need to prove caused injury to weapon, and the cause physical could have reasonably intended other individuals cause physical prosecution measure to the act 611 So. 2d 506

Physical injury to show that a

officer. — Even if the defendants were working undercover on an investigation of another Criminal Law, § 98.

§ 13A-3-23. Use of force in defense of a person.

(a) A person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for the purpose. A person may use deadly physical force if the actor reasonably believes that such other person is:

- (1) Using or about to use unlawful deadly physical force; or
- (2) Using or about to use physical force against an occupant of a dwelling while committing or attempting to commit a burglary of such dwelling; or
- (3) Committing or about to commit a kidnapping in any degree, assault in the first or second degree, burglary in any degree, robbery in any degree, forcible rape or forcible sodomy.

(b) Notwithstanding the provisions of subsection (a), a person is not justified in using deadly physical force upon another person if it reasonably appears or he knows that he can avoid the necessity of using such force with complete safety:

- (1) By retreating, except that the actor is not required to retreat:
 - a. If he is in his dwelling or at his place of work and was not the original aggressor; or
 - b. If he is a peace officer or a private person lawfully assisting a peace officer at his direction.

(2), (3) Repealed by Acts 1979, No. 79-599, p. 1060, § 1.

(c) Notwithstanding the provisions of subsection (a), a person is not justified in using physical force if:

- (1) With intent to cause physical injury or death to another person, he provoked the use of unlawful physical force by such other person; or
- (2) He was the initial aggressor, except that his use of physical force upon another person under the circumstances is justifiable if he withdraws from the encounter and effectively communicates to the other person his intent to do so, but the latter nevertheless continues or threatens the use of unlawful physical force; or

(3) The physical force involved was the product of a combat by agreement not specifically authorized by law. (Acts 1977, No. 607, p. 812, § 610; Acts 1979, No. 79-599, p. 1060, § 1.)